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Post Office Box 9010    Addison, Texas 75001-9010    5300 Belt Line Road    (972) 450-7000  
FAX (972) 450-7043

## **AGENDA**

### **REGULAR MEETING OF THE CITY COUNCIL**

**JANUARY 27, 2004**

**7:30 P.M.**

**COUNCIL CHAMBERS**

**5300 BELT LINE ROAD**

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### **REGULAR SESSION**

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Item #R1 –      Consideration of Old Business

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Item #R2 –      Consent Agenda

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## CONSENT AGENDA

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#2a – Approval of the Minutes for the December 11, 2003 and January 13, 2004 Council Meetings.

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Item #R3 - Appointment of a member to the Planning and Zoning Commission.

Administrative Comment:

Carol Doepfner's second term on the Planning and Zoning Commission will expire on February 8, 2004. Ms. Doepfner was appointed by Councilmember Ways. The appointment now belongs to Councilmember Hirsch.

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Item #R4 – Consideration of an Ordinance approving an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4801 Belt Line Road, Pei Wei Asian Diner, on application from Albert-Addison LLC, represented by Mr. Bob Borson of Birnbaum Magadini Architects.

Attachments:

1. Memorandum from Carmen Moran
2. Docket Map
3. Staff Report
4. Plans

The Planning and Zoning Commission Findings:

The Addison Planning and Zoning Commission, meeting in regular session on December 11, 2003, voted to recommend approval of the amendment to an existing Special Use Permit request for a restaurant, and an amendment to an existing Special Use Permit for the sale of alcohol for on-premises consumption, on application from Albert-Addison LLC, subject to the following conditions:

1. The applicant shall submit a revised landscaping plan for approval by the Parks Director prior to the issuance of a building permit. (This has been done.)
2. The screening fence on the north side of the building shall be made of solid metal or stucco panels. The Building Official shall have final approval over the appearance of the fence.
3. The restaurant shall not use the term "bar", "tavern", or any equivalent terms or graphic depictions that relate to alcoholic beverages, in exterior signs.
4. If the electrical demand for the building increases over what is currently provided, the electrical service will have to be placed underground.

Voting Aye: Bernstein, Braun, Doepfner, Herrick, Jandura  
Voting Nay: None  
Absent: Benjet

Administrative Recommendation:

This item was tabled from the January 13, 2004 Council Meeting.  
Administration recommends approval.

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Item #R5 – **PUBLIC HEARING** and consideration of a Resolution approving a joint application with Dallas County and surrounding cities for consideration of funding through the Federal Juvenile Accountability Block Grant Program (JABG) and waiving the Town's right to file an individual application.

Attachments:

1. Council Agenda Item Overview
2. Resolution

Administrative Recommendation:

Administration recommends approval.

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Item #R6 – Consideration of a Resolution authorizing the City Manager to enter into a contract in the amount of \$48,630.26 with Toshiba America Information Systems, Inc. for the purchase of 23 tablet PC's.

Attachments:

1. Council Agenda Item Overview
2. Contract
3. Bid Sheet

Administrative Recommendation:

Administration recommends approval.

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Item #R7 – Consideration of a Resolution approving the purchase of a 0.0790 acre temporary construction easement and approving the fee simple purchase of a 0.1934 acre tract of land for permanent right-of-way, both tracts generally located at 4455 Belt Line Road, and approving a contract for said purchases.

Attachments:

1. Council Agenda Item Overview
2. Resolution
3. Contract

Administrative Recommendation:

Administration recommends approval.

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Item #R8 – Consideration of a Resolution approving the purchase of a 0.041 acre easement in a tract of land generally located at 15180 Addison Road, Outback Steakhouse, for street right-of-way and other public purposes, and approving an easement agreement for said purchase.

Attachments:

1. Council Agenda Item Overview
2. Resolution
3. Agreement

Administrative Recommendation:

Administration recommends approval.

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**EXECUTIVE SESSION**

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Item #ES1 – Closed (executive) session of the City Council, pursuant to Section 551.071 of the Texas Government Code to consult with its attorney to seek advice regarding certain pending litigation, to wit: Transcontinental Realty Investors, Inc., et al. v. The Town of Addison, Texas, et al., Civil Action No. 3:03-CV-2132L, US District Court, Northern District of Texas, Dallas Division.

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Item #ES2 – Closed (executive) session of the City Council, pursuant to Section 551.071 of the Texas Government Code to consult with its attorney to seek advice regarding proposed settlement in *Town of Addison, Texas v. Absolute Systems, LTD. et al*, Cause No. CC-03-01967-B, Dallas County, Texas.

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**REGULAR SESSION**

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Item #R9 – Consideration of accepting proposed settlement in *Town of Addison, Texas v. Absolute Systems, LTD. et al*, Cause No. CC-03-01967-B, Dallas County, Texas.

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Adjourn Meeting

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Posted 5:00 p.m.  
January 22, 2004  
Carmen Moran  
City Secretary

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**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS  
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST  
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

**OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL  
AND  
ADDISON PLANNING AND ZONING COMMISSION**

**Special Joint Meeting of the Addison City Council  
And Planning and Zoning Commission**

December 11, 2003  
6:30 p.m. – Addison Service Center  
16801 Westgrove Drive

**I. Joint Meeting of City Council and Planning and Zoning Commission**

Present: **Council:** Mayor Wheeler, Councilmembers Chow, Hirsch, Mallory, Niemann, Turner

**Planning and Zoning Commissioners:** Bradbury, Braun, Bernstein, Doepfner, Herrick, Jandura

Absent: Councilmember Silver, Commissioner Benjet

**Item #1** – Presentation and information session on Hardi-plank siding.

No action taken.

**Item #2** – **JOINT PUBLIC HEARING** of the City Council and Planning and Zoning Commission on Case 1437-Z/CityHomes – Requesting approval of amendments to the concept plan for the residential sub-district and approval of final development plans, with waivers, and conditions, for a 183-unit town home/condominium development zoned UC (Urban Center) District, and located on approximately 9.732 acres north of Morris Avenue, east of Quorum Drive, south of Airport Parkway and west of the proposed Spectrum Drive (and within that area generally known as Addison Circle) on application from City Homes.

Chairman Bradbury opened the meeting as a public hearing for the Planning and Zoning Commission. Mayor Wheeler opened the meeting as a public hearing for the City Council.

There were no questions or comments.

Chairman Bradbury closed the meeting as a public hearing for the Planning and Zoning Commission. Mayor Wheeler closed the meeting as a public hearing for the City Council.

**Item #3** – Consideration of approval of amendments to the concept plan for the residential sub-district and approval of final development plan, with waivers, and conditions, for a 183-unit town home/condominium development zoned UC (Urban Center) District, located on approximately 9.732 acres north of Morris Avenue, east of

Quorum Drive, south of Airport Parkway and west of the proposed Spectrum Drive (and within that area generally known as Addison Circle), on application from CityHomes.

**(i) Planning and Zoning Commission Review of Concept Plan Amendments and Consideration of Recommendation to Council:**

Commissioner Herrick moved to duly recommend approval of the following:

Approval of the amendments to the concept plan as follows:

1. The park site (O-6) shall be moved back to its location in the original concept plan, but surrounded by streets as shown on the CityHomes plan.
2. The M-2 “Mews” street shall be re-aligned and wrapped around the park as shown on the CityHomes plan.
3. The R-4, “residential” street is reconfigured to go with the R-street section at Spectrum Drive and Quorum Drive, as shown on the CityHomes plan.

Commissioner Braun seconded. Motion carried.

Voting Aye: Bernstein, Braun, Doepfner, Herrick, Jandura

Voting Nay: None

Absent: Benjet.

**(ii) Council Consideration of Concept Plan Amendments:**

Councilmember Mallory moved to approve the following:

Approval of the amendments to the concept plan as follows:

1. The park site (O-6) shall be moved back to its location in the original concept plan, but surrounded by streets as shown on the CityHomes plan.
2. The M-2 “Mews” street shall be re-aligned and wrapped around the park as shown on the CityHomes plan.
3. The R-4, “residential” street is reconfigured to go with the R-street section at Spectrum Drive and Quorum Drive, as shown on the CityHomes plan.

Councilmember Chow seconded. Motion carried.

Voting Aye: Chow, Hirsch, Mallory, Niemann, Turner, Wheeler,

Voting Nay: None

Absent: Silver

**(iii) Planning and Zoning Commission Review and Consideration of Final Development Plan:**

Commissioner Jandura moved to duly approve the final development plan, with waivers and conditions, for a 183-unit town home/condominium development zoned UC (Urban Center) District, located on approximately 9.732 acres north of Morris Avenue, east of Quorum Drive, south of Airport Parkway and west of the proposed Spectrum Drive (within that area generally known as Addison Circle), as follows:

Approval of the proposed final development plan with the following waivers to design standards:

1. Approval of the waiver of design standards in order to allow lot widths of not less than 20 feet.
2. Approval of the waiver to design standards in order to allow depths of not less than 55 feet.
3. Approval of the waiver to design standards in order to allow lot coverage that exceeds 65% of the lot.
4. Approval of the waiver to design standards in order to allow up to 10% of the total lots in the development to have unit sizes that are less than 1,600 square feet, provided that no units shall be less than 1,450 square feet.
5. Approval of the waiver to design standards in order to allow all lots that face onto major streets (as shown on the attached plan) to be 90% brick (stone and cast stone shall count as brick) on the fronts and sides of the buildings, and not less than 10% brick on the rear of the buildings (excluding garage doors). The remaining percentages on the buildings can be stucco or hardi-plank.

Approval of the development plan subject to the following conditions:

1. Trash dumpsters, electrical switchgears and transformers, and gang mail boxes shall be located out of visibility triangles for street and drive entrances and shall be screened.
2. Front yard fences shall not be taller than 42 inches, and a note shall be added to the plan that states 42 inches as a maximum allowed height.
3. All balcony and patio railings shall be metal picket or solid metal panels. No chain-link balcony railings shall be allowed.
4. All mechanical equipments should be mounted on the roof and screened from view.

5. Design of all facilities adjacent to Spectrum Drive should complement and be coordinated with proposed street improvements.
6. Each 20 ft. Firelane, Utility & Access Easement should be shown on "Final Plat" as 20 ft. Firelane, Utility, Drainage & Access Easement.
7. This Property is located within the 65 dnl noise contour. In accordance with the adopted Addison airport master plan, an aviation easement is required.
8. Prior to any development the applicant must submit plans to the FAA for review/approval to determine compliance with Addison's height hazard zoning.
9. Prior to acquiring a building permit applicant/developer must provide verification from a certified acoustical expert that structure, outside to inside, meets sound attenuation of 25 dB
10. Metering plan must comply with all current regulations of Texas Commission on Environmental Quality (TCEQ). Contact TCEQ to determine if Master Meter set up is an appropriate application for this type development. The Town's preference would be to use the Master Meter set up as shown on plans.
11. All water mains must be tied into a loop system (tapping sleeve and Valve). No dead end mains will be permitted.
12. Preferred design on mews street is without 6" vertical curb and gutter, instead use standard rollover type curb with valley gutter as used in other mews streets in Addison Circle development.
13. The developer shall fund design and construction of the streetscape around the park.
14. Tree grates shall be used at tree wells on all Category C and D streets.

Commissioner Braun seconded. Motion carried.

Voting Aye: Bernstein, Braun, Doepfner, Herrick, Jandura

Voting Nay: None

Absent: Benjet.

#### **Item #4 – City Council Adjournment**

### **II. Continuation of Meeting of Planning and Zoning Commission**

#### **Item #5 – Planning and Zoning Commission (Remainder of P&Z docket)**

PRELIMINARY PLAT/ParkView at Addison Circle. Requesting approval of a

preliminary plat for Block A, Lots 1 and 2, Block B, Lots 1-5, Block C, Lot 1, Block D, Lots 1-5, and Block E, Lots 1 and 2, located on 9.016 acres bounded by Morris Avenue on the south, Quorum Drive on the west, A proposed street on the north, and Spectrum Drive on the east, on application from CityHomes, represented by Mr. Robert Jabavi of Brockette/Davis/Drake.

Commissioner Braun moved to recommend approval of the request for the preliminary plat for ParkView at Addison Circle, subject to the following conditions:

1. Each 20 ft. Firelane, Utility & Access Easement should be changed to a "20 ft. Firelane, Utility, Drainage & Access Easement" on the Preliminary Plat.
2. Preliminary development drainage and water/sewer plans must be converted into final civil design plans and specifications for construction. These plans must also be accompanied by comprehensive grading and paving plans.
3. Plat should reference Addison Circle in lieu of Addison Place.
4. Design of all facilities adjacent to Spectrum Drive should complement and be coordinated with proposed street improvements.

Commissioner Doepfner seconded. Motion carried.

Voting Aye: Bernstein, Braun, Doepfner, Herrick, Jandura,

Voting Nay: None

Absent: Benjet

Case 1443-SUP/Pei Wei Asian Diner. Requesting approval of an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4801 Belt Line Road, on application from Albert-Addison LLC, represented by Mr. Bob Borson of Bernbaum Magadini Architects.

Chairman Bradbury opened the meeting as a public hearing. There were no questions or comments. Chairman Bradbury closed the meeting as a public hearing.

Commissioner Herrick moved to recommend approval of the request for an amendment to an existing Special Use Permit for a restaurant, and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, on application from Albert-Addison LLC, subject to the following conditions:

1. The applicant shall submit a revised landscaping plan for approval by the Parks Director prior to the issuance of a building permit.
2. The screening fence on the north side of the building shall be made of made of solid metal or stucco panels. The Building Official shall have final approval over the appearance of the fence.

3. The restaurant shall not use the term “bar”, “tavern”, or any equivalent terms or graphic depictions that relate to alcoholic beverages, in exterior signs.
4. If the electrical demand for the building increases over what is currently provided, the electrical service will have to be placed underground.

Commissioner Braun seconded. Motion carried.

Voting Aye: Bernstein, Braun, Doepfner, Herrick, Jandura

Voting Nay: None

Absent: Benjet

FINAL PLAT/Albert-Addison Addition. Requesting approval of a final plat for on lot on .906 acres, located at the northeast corner of Addison Road and Belt Line Road, on application from Albert-Addison LLC, represented by Mr. Mark Albert.

Commissioner Doepfner moved to recommend approval of a final plat for Albert-Addison Addition, on application from Albert-Addison LLC, subject to the following conditions:

1. Civil design plans and specification must be approved by the Town for all proposed paving, drainage, grading, water, and sewer improvements on-site and off-site.
2. All landscaping, irrigation, driveway, and sidewalk improvements must be designed and constructed in accordance with proposed parkway improvements on Addison Road.

Commissioner Jandura seconded. Motion carried.

Voting Aye: Bernstein, Braun, Doepfner, Herrick, Jandura,

Voting Nay: None

Absent: Benjet

Case 1444-Z/Addison Walk by Direct Development. Requesting approval of a change of zoning from “LR” (Local Retail) to “PD” (Planned Development), in order to change parking requirements, located on 7.3760 acres at 5000 Belt Line Road, on application from Direct Development, represented by Mr. Mark Henderson.

Chairman Bradbury opened the meeting as a public hearing. There were no questions or comments. Chairman Bradbury closed the meeting as a public hearing.

Commissioner Braun moved to recommend approval of the change from a “LR” (Local Retail) zoning district to “PD” (Planned Development) zoning district in order to allow for a mixed-use parking ratio, with the ratios to be:

<b>Office</b>	<b>1 space per 300 square feet</b>
Retail/Service	1 space per 200 square feet
Restaurant	1 space per 180 square feet,

and subject to the following condition:

1. That the staff shall review elevation drawings for the proposed 36-foot height for the building at the east end of the site, prior to the case going to the Council.

Commissioner Doepfner seconded. Motion carried.

Voting Aye: Bernstein, Braun, Doepfner, Herrick, Jandura,  
Voting Nay: None  
Absent: Benjet

Case 1445-SUP/Nothing But Noodles. Requesting approval of a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5000 Belt Line Road, Suite 775, on application from Nothing But Noodles, represented by Mr. Avi VanGruber.

Chairman Bradbury opened the meeting as a public hearing. There were no questions or comments. Chairman Bradbury closed the meeting as a public hearing.

Commissioner Braun recommend approval of the request for a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on premises consumption only, on application from Nothing But Noodles, represented by Mr. Avi VanGruber, subject to the following conditions:

1. The floor plan and elevations shall be revised to add a second exit out of the dining area.
2. The new landscaping for the site shall be installed and the irrigation system for the site inspected prior to the issuance of a Certificate of Occupancy for this restaurant.
3. The applicant shall not use any terms, including the term "bar," "tavern," or graphic depictions that denote alcoholic beverages in exterior signs.

Commissioner Bernstein seconded. Motion carried.

Voting Aye: Bernstein, Braun, Doepfner, Herrick, Jandura  
Voting Nay: None  
Absent: Benjet

Case 1446-SUP/Dunn Bros. Coffee. Requesting approval of a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 3725 Belt Line Road, (formerly CC's Coffee), on application from Mr. Alan R. Geddie.

Chairman Bradbury opened the meeting as a public hearing. There were no questions or comments. Chairman Bradbury closed the meeting as a public hearing.

Commissioner Herrick moved to recommend approval of a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, on application from Dunn Bros. Coffee, represented by Mr. Alan R. Geddie, subject to the following conditions:

1. The applicant must meet all requirements of the Food Service Code.
2. The applicant shall not use the term "bar", "tavern" or any other terms or graphic depictions that relate to alcoholic beverages in any exterior signs.

Commissioner Braun seconded. Motion carried.

Voting Aye: Bernstein, Braun, Doepfner, Herrick, Jandura,

Voting Nay: None

Absent: Benjet.

There being no further business before the Commission, the meeting was adjourned.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Secretary

## OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

January 13, 2004  
7:30 p.m. - Council Chambers  
5300 Belt Line Road

Present: Mayor Wheeler, Councilmembers Chow, Hirsch, Mallory, Silver, Turner  
Absent: Niemann

### Item #R1 – Consideration of Old Business

The following employees were introduced to the Council: Ryan Haley (Fire), Will Gilleland (Building and Fleet Services) and Neil Gayden (Development Services).

Ron Whitehead, City Manager, announced a Quarterly Update Work Session which has been tentatively set for January 20, 2004 at 6:30 p.m. A Visioning Work Session scheduled for January 28, 2003 has been cancelled and will be re-scheduled.

Mayor Wheeler announced upcoming preparation for the City Manager Evaluation.

### Item #R2 – Consent Agenda

Item #2a was considered separately.

Item #2b – Consideration of approval of construction and authorization of final payment in the amount of \$93,644.76 to Big Sky Construction for the Addison Arts District Pavilion building project. Approved

Item #2c – Consideration of approval of construction and authorization of final payment in the amount of \$27,462.25 to Rebcon, Inc. for the Richard Byrd Drive pavement reconstruction project. Approved

Councilmember Silver moved to duly approve the above listed items. Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Silver, Turner  
Voting Nay: None  
Absent: Niemann

### Item #2a – Approval of the Minutes for the December 9, 2003 Council Meeting.

Councilmember Chow moved to duly approve the Minutes of the December 9, 2003 Council Meeting, subject to a correction to Item #R4 to reflect a motion made by Councilmember Mallory. Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Silver, Turner  
Voting Nay: None  
Absent: Niemann

Item #R3 – **PUBLIC HEARING** and approval of a preliminary plat for Block A, Lots 1 and 2; Block B, Lots 1-5; Block C, Lot 1; Block D, Lots 1-5 and Block E, Lots 1 and 2, ParkView at Addison Circle Addition, located on 9.016 acres bounded by Morris Avenue on the south, Quorum Drive on the west, a proposed street on the north, and Spectrum Drive on the east, on application from CityHomes, represented by Mr. Robert Jabavi of Brockett/Davis/Drake.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the public hearing.

Councilmember Turner moved to duly approve a preliminary plat for Block A, Lots 1 and 2; Block B, Lots 1-5; Block C, Lot 1; Block D, Lots 1-5 and Block E, Lots 1 and 2, ParkView at Addison Circle Addition, located on 9.016 acres bounded by Morris Avenue on the south, Quorum Drive on the west, a proposed street on the north, and Spectrum Drive on the east, on application from CityHomes, subject to the following conditions:

1. Each 20 ft. Firelane, Utility & Access Easement should be changed to a “20 ft. Firelane, Utility, Drainage & Access Easement” on the Preliminary Plat.
2. Preliminary development drainage and water/sewer plans must be converted into final civil design plans and specifications for construction. These plans must also be accompanied by comprehensive grading and paving plans.
3. Plat should reference Addison Circle in lieu of Addison Place.
4. Design of all facilities adjacent to Spectrum Drive should compliment and be coordinated with proposed street improvements.

Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Silver, Turner  
Voting Nay: None  
Absent: Niemann

Councilmember Chow recused himself from Items #R4 and #R5 and departed from the Council chambers.

Item #R4 – **PUBLIC HEARING** and consideration of an Ordinance approving an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4801 Belt Line Road, Pei Wei Asian Diner, on application from Albert-Addison LLC, represented by Mr. Bob Borson of Birnbaum Magadini Architects.

Mayor Wheeler opened the meeting as a public hearing. Mark Albert, property owner of 4801 Belt Line Road, spoke. There were no further questions or comments. Mayor Wheeler closed the public hearing.

Councilmember Mallory moved to duly pass an Ordinance approving an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4801 Belt Line Road, Pei Wei Asian Diner, on application from Albert-Addison LLC., subject to the applicant and staff working out the sidewalk and landscaping details and subject to the following conditions:

1. The applicant shall submit a revised landscaping plan for approval by the Parks Director prior to the issuance of a building permit.
2. The screening fence on the north side of the building shall be made of solid metal or stucco panels. The Building Official shall have final approval over the appearance of the fence.
3. The restaurant shall not use the term "bar", "tavern", or any equivalent terms or graphic depictions that relate to alcoholic beverages, in exterior signs.
4. If the electrical demand for the building increases over what is currently provided, the electrical service will have to be placed underground.

Councilmember Silver seconded. Councilmember Silver rescinded his second. Councilmember Turner seconded. The motion failed.

Voting Aye: Mallory, Turner  
Voting Nay: Wheeler, Hirsch, Silver  
Absent: Niemann  
Abstaining: Chow

Council asked the applicant and/or staff to provide:

- Plans to indicate building exterior
- Clarification of Sidewalk utilization
- Landscaping Plans
- Utility Plans
- Traffic Safety Analysis

Mayor Wheeler called for another motion. Councilmember Silver moved to table this item. Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Hirsch, Mallory, Silver, Turner  
Voting Nay: None  
Absent: Niemann  
Abstaining: Chow

Item #R5 – Consideration of approval of a final plat for one lot of .906 acres, located at the northeast corner of Addison Road and Belt Line Road, on application from Albert-Addison L.L.C., represented by Mark Albert.

Councilmember Silver moved to duly approve a final plat for one lot of .906 acres, located at the northeast corner of Addison Road and Belt Line Road, on application from Albert-Addison L.L.C., represented by Mark Albert, subject to the following conditions:

1. Civil design plans and specifications must be approved by the Town for all proposed paving, drainage, grading, water, and sewer improvements on-site and off-site.
2. All landscaping, irrigation, driveway, and sidewalk improvements must be designed and constructed in accordance with proposed parkway improvements on Addison Road.

Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Hirsch, Mallory, Silver, Turner  
Voting Nay: None  
Absent: Niemann  
Abstaining: Chow

Councilmember Chow returned to the Council chambers.

Councilmember Niemann arrived at this time.

Item #R6 – **PUBLIC HEARING** and consideration of an Ordinance approving a change of zoning from “LR” (Local Retail) to “PD” (Planned Development), in order to change parking requirements, located on 7.3760 acres at 5000 Belt Line Road, Addison Walk, on application from Direct Development represented by Mr. Mark Henderson.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Silver moved to duly pass Ordinance No. 004-001 approving a change of zoning from “LR” (Local Retail) to “PD” (Planned Development), in order to change parking requirements, located on 7.3760 acres at 5000 Belt Line Road, Addison Walk, subject to the following ratios:

Office	1 space per 300 square feet
Retail/Service	1 space per 200 square feet
Restaurant	1 space per 180 square feet

Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None  
Absent: None

Item #R7 – Consideration of an Ordinance approving a sign package for the Addison Walk Shopping Center that includes three exceptions: (1) an exception to Section 62-162, (Premise Signs) and Section 62-163 (Area) for signs attached to the building; (2) an exception to Section 62-185, (Specifications) and Section 62-285 (Luminescent Gaseous Tubing) for two pole signs on the perimeter of the property; (3) an exception to Section 62-285 (Luminescent Gaseous Tubing) for a monument sign at the Belt Line Road entrance, located at 5000 Belt Line Road, on application from Direct Development, represented by Mr. Mark Henderson.

Councilmember Niemann moved to duly pass Ordinance No. 004-002 approving a sign package for the Addison Walk Shopping Center that includes three exceptions: (1) an exception to Section 62-162, (Premise Signs) and Section 62-163 (Area) for signs attached to the building; (2) an exception to Section 62-185, (Specifications) and Section 62-285 (Luminescent Gaseous Tubing) for two pole signs on the perimeter of the property; (3) an exception to Section 62-285 (Luminescent Gaseous Tubing) for a monument sign at the Belt Line Road entrance, located at 5000 Belt Line Road, subject to the following conditions:

1. West end sign is to be only 2 foot and the north end sign letters to be 2 ½ foot.
2. Approval of Blade signs, 3 foot letters for all type “A” tenants and 2 foot letters for all type “B” tenants.
3. Approval of design for the pole signs as proposed by the applicant.
4. Exposed luminescent gaseous tubing not approved.
5. Exposed luminescent gaseous tubing on a monument sign not approved.

Councilmember Silver seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Niemann, Silver, Turner  
Voting Nay: Mallory  
Absent: None

Item #R8 – **PUBLIC HEARING** and consideration of an Ordinance approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5000 Belt Line Road, Suite 775, on application from Northing But Noodles, represented by Mr. Avi VanGruber.

Mayor Wheeler opened the meeting as a public hearing. There were no questions or comments. Mayor Wheeler closed the meeting as a public hearing.

Councilmember Mallory moved to duly pass Ordinance No. 004-003 approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 5000 Belt Line Road, Suite 775, on application from Nothing But Noodles, subject to the following conditions:

1. The floor plan and elevations shall be revised to add a second exit out of the dining area.
2. The new landscaping for the site shall be installed and the irrigation system for the site inspected prior to the issuance of a Certificate of Occupancy for this restaurant.
3. The applicant shall not use any terms, including the term “bar”, “tavern”, or graphic depictions that denote alcoholic beverages in exterior signs.

Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R9 – **PUBLIC HEARING** and consideration of an Ordinance approving a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 3725 Belt Line Road (formerly CC’s Coffee), on application from Dunn Brothers Coffee, represented by Mr. Alan R. Geddie.

Councilmember Turner moved to duly pass Ordinance No. 004-004 approving a Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 3725 Belt Line Road (formerly CC’s Coffee), on application from Dunn Brothers Coffee, subject to the following conditions:

1. The applicant must meet all requirements of the Food Service Code.
2. The applicant shall not use the term “bar”, “tavern” or any other terms or graphic depictions that relate to alcoholic beverages in any exterior signs.

Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R10 – Consideration of an Ordinance approving a meritorious exception to Chapter 62, Signs, Section 62-163, Area, for Mama Fu’s Noodle House, located at 3711 Belt Line Road, on application from Reynolds Sign.

Councilmember Niemann moved to duly pass ordinance No. 004-005 approving a meritorious exception to Chapter 62, Signs, Section 62-163, Area, for Mama Fu’s Noodle House, located at 3711 Belt Line Road, subject to no conditions. Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R11 – Consideration of an Ordinance amending the Town of Addison, Code of Ordinances, Chapter 18, Buildings and Building Regulations, Article X, Fences, Section 18-621, Setback Requirements, to exempt municipally owned property from the setback requirement for fences.

Councilmember Mallory moved to duly pass Ordinance No. 004-006 amending the Town of Addison, Code of Ordinances, Chapter 18, Buildings and Building Regulations, Article X, Fences, Section 18-621, Setback Requirements, to exempt property owned by the Town of Addison from the setback requirement for fences. Councilmember Turner seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R12 – Consideration of a Resolution authorizing the City Manager to enter into an amendment to an advertising agreement with Krause Advertising to provide marketing consultation, creative ad production services, administrative and account oversight for the Town marketing and special events initiatives.

Councilmember Silver moved to duly pass Resolution No. R04-001 authorizing the City Manager to enter into an amendment to an advertising agreement with Krause Advertising to provide marketing consultation, creative ad production services, administrative and account oversight for the Town marketing and special events initiatives, subject to language modification to be included in the agreement which shall read as “Whereas, for 2004, there has been a significant change in the marketing services required; and”.

Councilmember Chow seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner

Voting Nay: None

Absent: None

Item #R13 – Consideration of a Resolution regarding certain matters pertaining to a Ground Lease at Addison Airport between the Town, as Landlord, and Raymond F. Sawtelle, Jr. and Sheila L. Sawtelle, as Tenant, (d/b/a Monarch Air Addison) as follows: (i) approval of First Amendment to Ground Lease (regarding the mortgaging of the leasehold estate of Tenant), and (ii) consent to an estoppel letter to Legacy Bank with regard to a loan to Trey Aviation, a Texas Limited Liability Company, a wholly owned subsidiary of Tenant.

Councilmember Turner moved to moved to duly pass Resolution No. R04-002 approving a Ground Lease at Addison Airport between the Town, as Landlord, and Raymond F. Sawtelle, Jr. and Sheila L. Sawtelle, as Tenant, (d/b/a Monarch Air Addison) as follows: (i) approval of First Amendment to Ground Lease (regarding the mortgaging of the leasehold estate of Tenant), and (ii) consent to an estoppel letter to

Legacy Bank with regard to a loan to Trey Aviation, a Texas Limited Liability Company, a wholly owned subsidiary of Tenant, subject to language modification being made to the amendment that reads "limits the use of the loan to the operation of the tenants business at Addison Airport".

Councilmember Niemann seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner  
Voting Nay: None  
Absent: None

Item #R14 – Consideration of an Ordinance amending the Town of Addison Code of Ordinances, Chapter 2, Administration, Article III, Officers and Employers, Division 1, Section 2-74, Entertainment Expenses.

Councilmember Turner moved to duly pass Ordinance No. 004-007 amending the Town of Addison Code of Ordinances, Chapter 2, Administration, Article III, Officers and Employers, Division 1, Section 2-74, Entertainment Expenses, subject to the revision of the language in the policy to reflect approval before incurring expenses. Councilmember Mallory seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner  
Voting Nay: None  
Absent: None

Item #R15 – Consideration of a Resolution authorizing the staff and Council dinner expenses associated with the Texas Municipal League (TML) conference.

Councilmember Turner moved to duly pass Resolution No. R04-003 authorizing the staff and Council dinner expenses associated with the Texas Municipal League (TML) conference. Councilmember Niemann seconded. The motion carried.

Voting Aye: Wheeler, Chow, Hirsch, Mallory, Niemann, Silver, Turner  
Voting Nay: None  
Absent: None

There being no further business before the Council, the meeting was adjourned.

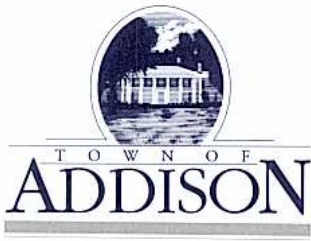
\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Secretary

#R3

**THERE ARE NO ATTACHMENTS  
FOR ITEM #R3**



50 YEARS OF FUN!

Post Office Box 9010    Addison, Texas 75001-9010    5300 Belt Line Road    (972) 450-7000  
FAX (972) 450-7043

## Memorandum

January 21, 2004

TO: Ron Whitehead, City Manager  
FROM: Carmen Moran, Director of Development Services  
SUBJECT: Pei Wei Asian Diner

On January 13, 2004, the Council reviewed the Special Use Permit request from Albert-Addison LLC to redevelop the Solly's Barbecue Restaurant (on the northeast corner of Addison Road and Belt Line Road) with a Pei Wei Asian Diner. At that meeting, the Council had concerns about four items: the exterior facades, a deceleration lane into the site and a free right-turn lane from Belt Line onto Addison Road, a sidewalk down the Addison Road side of the site, and a desire to require that the power lines serving the property be placed underground.

The staff has met with the applicant and his architect, and we have attempted to address the items the Council listed.

### 1. Exterior Facades

The Council expressed some concern that the stucco proposed for the building was not consistent with the brick exteriors that other businesses along Belt Line had been required to build. The applicant has prepared three perspective drawings that better illustrate what the building will look like. The drawings also attempt to better illustrate how the wooden façade on the front of the building will be constructed. Since Pei Wei Asian Diner will be the new tenant in the building, the applicant wants the architecture to have an Asian feel, and he does not believe the Asian theme can be as successfully delivered with a brick building. Other buildings along Belt Line have been approved with a stucco façade when it was demonstrated to the Council that the stucco material was more conducive to the type of building the architect was trying to achieve. Olive Garden, Café Express, Summerfield Suites Hotel, La Quinta Hotel, Prestonwood Place Shopping Center, and the Village on the Parkway Shopping Center are a few of the buildings that have been built with stucco facades.

## **2. Deceleration Lane and Right Turn Lane**

Robin Jones in the Public Works Department has investigated the Council's concern about the need for a deceleration lane into the site and a free right turn from Belt Line Road to Addison Road. His findings are discussed in his attached memo.

## **3. Addison Road Sidewalk**

Slade Strickland has reviewed a revised landscaping plan, which the applicant submitted. The plan calls for a sidewalk to be installed against Addison Road for the portion of the site that is north of the drive entrance. The walk then turns into the site and continues through the parking lot to Belt Line Road. The sidewalk would be a stamped concrete pattern that would be different from the parking lot paving. In addition, the drive aisle is wide enough to accommodate the sidewalk without causing pedestrians to walk in a lane of traffic. Slade discusses the plan in his attached memo.

## **4. Undergrounding of Power Lines**

The Council raised the question as to whether the applicant should be required to put the power lines across the back (north side) of the site underground. In the original staff report, the staff discussed the ordinance requirement that the electrical service to the building (the lateral line) would not have to be put underground unless the power demand was increased. However, at the meeting it became apparent to the staff that the Council was concerned about the three power poles that go across the north side of the site (photos #1 and #2 attached). These three poles are the primary or feeder lines to this site, and they serve both this building and Thomas Reprographics. They belong to ONCOR, not to the applicant. Most sites along Belt Line are served by feeder lines across the front of the site (photos #3, #4, #5). However, this site is served from the rear. The ordinance does not require owners to underground the primary lines that serve their properties, only the lateral lines from the primary to their buildings (for new construction or an increase in demand).

We hope this additional information addresses the Council's concerns. Please let me know if you have any questions.



## MEMO

To: Carmen Moran

From: Robin Jones

Date: January 19, 2004

Re: Deceleration Lane – Westbound Belt Line Road to Northbound Addison Road

Public Works has not commissioned a traffic study at Belt Line Road and Addison Road focusing on a westbound to northbound free right turn lane; however, we visited the location during rush hours and counted vehicles making this turn. We observed that during the evening rush hours of 4:30 to 6:30 p.m., less than 100 vehicles turned per hour. In the Town of Addison Transportation Plan, under the section titled Intersection Treatments, certain physical modifications such as right turn lanes should be considered when turning movements reach at least 200 vehicles per hour. It is our opinion that a right turn lane at this location isn't necessary.

Constructing or requiring the construction of a right turn lane on westbound Belt Line Road at Addison Road would present several physical challenges. First and foremost of these is the large water meter vault on the affected corner that contains a valve connecting our water system to the City of Dallas fifty-four inch water line. This vault and its contents would be very difficult and expensive to relocate.

Additionally, there are significant power distribution lines above and below ground on this corner. There is also a considerable grade difference between the elevation of Belt Line Road and the existing businesses in this center. Both existing sidewalks and the center's parking could be adversely affected.

If the above issues were resolved, we would still need to make sure a new right turn lane would work smoothly with the existing right turn lane into BJ's restaurant.

# Memorandum

DATE: January 21, 2004  
TO: Carmen Moran, Director of Development Services  
FROM: Slade Strickland, Director of Parks & Recreation  
SUBJECT: Pei Wei – Sidewalk and Landscaping

---

After reviewing the landscape/sidewalk schemes submitted by the applicant, I recommend approval of Scheme II because it allows for the maximum amount of landscaping along Addison Road. In regards to the 4' sidewalk shown at the back of the Addison Road curb, the architect indicated that the applicant is willing to place it against the parking lot curb and put the planter along the back of the Addison Road curb. I recommend this scenario. This would leave a 4' sidewalk and a 2'9" planter bed. The shrubs proposed for the space will work, but they will require frequent shearing to keep them in bounds.

The down side of placing the sidewalk within the parking lot is that pedestrians will be walking behind three parking spaces along Addison Road, which is not an ideal situation. On the other hand, this plan is a compromise between previous plans that required walking behind six cars north of the Addison Road entry and three south of the drive. In addition, scheme II avoids having to put sidewalks against the curb the entire length of Addison Road.

PHOTO #1



PHOTO #2



PHOTO #3



PHOTO #4

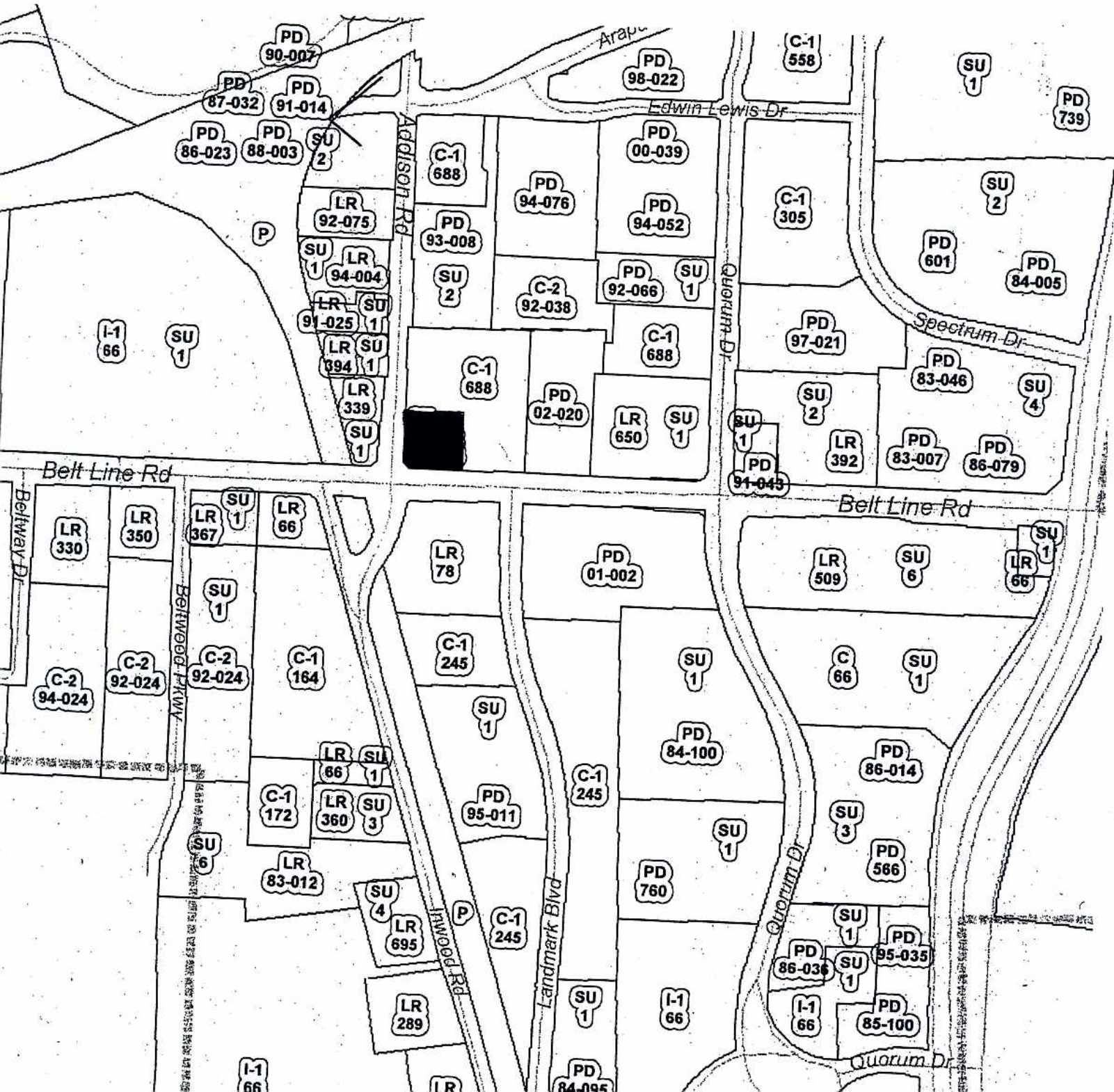


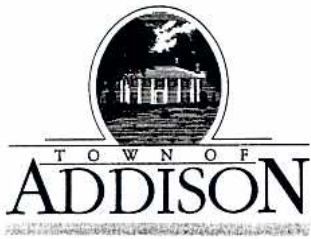
PHOTO #5



# 1443-SUP

Case 1443-SUP/Pei Wei Asian Diner. Requesting approval of an amendment to an existing Special Use Permit for a restaurant and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only, located at 4801 Belt Line Road, on application from Albert-Addison LLC, represented by Mr. Bob Borson of Bernbaum Magadini Architects.





#R4-3  
*Addison 50!*

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Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road (972) 450-7000

FAX (972) 450-7043

December 5, 2003

## STAFF REPORT

RE: Case 1443-SUP/Pei Wei Asian Diner

LOCATION: 4801 Belt Line Road (Solly's Barbecue)

REQUEST: Approval of an amendment to an existing Special Use Permit for a restaurant, and an existing Special Use Permit for the sale of alcoholic beverages for on-premises consumption only

APPLICANT: Albert-Addison L.P., represented by Mr. Bob Borson of Bernbaum Magadini Architects

## DISCUSSION:

Background. This request is for a remodel and re-tenanting of the Solly's Barbecue Restaurant on the northeast corner of Addison Road and Belt Line Road. Solly's was one of the first restaurants in Addison and was approved through Ordinance 295 approved on November 23, 1976. Solly's expects to close at the end of this year, and the owners are planning to remodel the restaurant and lease it to Pei Wei Asian Diner.

Proposed Plan. The site contains .906 acres and is zoned Local Retail. It is developed with two buildings: Thomas Reprographics and Solly's. Thomas Reprographics is a retail store and must provide parking at a ratio of 1/200. Solly's was built when the parking ratio for restaurants was 1/100; therefore, it is legal non-conforming or "grandfathered" with regard to its parking ratio. As long as the building is not made any larger, it can be remodeled and still keep the 1/100 parking ratio. The owner is planning to take off some of the appendages that have been added to the building over time, and it will actually be smaller than it is now. The kitchen will be remodeled and all equipment will be brought up to the standards of the current Food Service Ordinance.

The plans for the restaurant show a 3,525 square foot restaurant with no outside patio. Pei Wei offers an Asian-food menu, and there are several existing locations in the metroplex. Customers order at a counter and take a number. Non-alcoholic beverages

are self-service and the food is delivered to the table. Although Pei Wei will sell beer and wine, there is not a separate bar space. Pei Wei also offers a take-out business, and the entrance for the take-out counter will be on the west side of the building.

Facades. The applicant is planning to refinish the existing stucco on the building and repaint it. Stucco will also be added to the back of the building, which is currently painted brick. Some of the storage sheds that have been added to the east side of the building will be removed, and the site will be cleaned up. The front façade will feature a wooden lattice screening structure that will extend 10 feet out in front of the building. The Local Retail regulations require that all buildings in the Local Retail district be at least 80% of all exterior walls shall be brick or stone veneer. However, that requirement can be waived through a Special Use Permit.

Parking. As noted earlier, the restaurant is "grandfathered" at a ratio of 1/100. Under that ratio, the building requires 36 spaces and the entire site requires 50 spaces. It provides 70 spaces, which is 20 over the required amount. At the 1/70 parking ratio, Pei Wei would require 50 spaces and the entire site would require 64, so it would still have enough parking even if it were required to be parked at the current ratio.

Landscaping. The Parks Department has reviewed the plans. As Slade notes, the site is also grandfathered as to the percentage of the site required for landscaping. However, the applicant should provide the number of trees required under the current ordinance. The plans should show 18 trees, but only show 9. Slade also notes (under Item #3) that there is 12-foot right-of-way requirement along Addison Road (see staff report on Final Plat for Albert-Addison Addition). The staff has a plan for the widening of Addison Road that includes a streetscape plan for each side of the street. If the 12 feet is dedicated, the parking along Addison Road would be eliminated, and the new greenway should be planted in accordance with the new streetscape plans for Addison Road, which basically show Red Oak trees planted 30 feet on center and a sidewalk.

Mechanical Equipment. The applicant shows a utility screen fence along the north side of the building to screen mechanical equipment. The plans do not indicate whether the fence is wood or metal. The staff has not had good experience with wooden screening fences, and recommends the fence be made of solid metal or stucco panels.

Signage. The applicant did not show any signs on the building. He should be aware that all signs must be permitted through the Addison Sign Ordinance. However, the Town has a policy against using the term "bar", "tavern", or any equivalent terms or graphic depictions that relate to alcoholic beverages, in exterior signs.

Overhead Electrical Service. The building is currently served with an overhead electrical line. All new electrical utility lines and services must be constructed

underground. This existing overhead service is "grandfathered" unless the Pei Wei requires more electricity than Solly's and causes the size of the transformers on the pole to increase or the number of (or size of) the overhead conductors from the pole to the building increases.

**RECOMMENDATION:**

Staff recommends approval of this request subject to the following conditions:

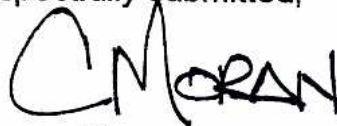
-the site should provide the number of trees against the street frontage required by the current landscaping ordinance. In addition, the Addison Road frontage (after right-of-way dedication) should be landscaped in accordance with the streetscape plans for Addison Road. The final landscape and irrigation plans shall meet the requirements of the Landscape Regulations, Section 4. – Landscape and Irrigation Plan Submission.

-the screening fence on the north side of the building shall be made of made of solid metal or stucco panels. The Building Official shall have final approval over the appearance of the fence.

-the restaurant shall not use the term "bar", "tavern", or any equivalent terms or graphic depictions that relate to alcoholic beverages, in exterior signs.

-if the electrical demand for the building increases over what is currently provided, the electrical service will have to be placed underground.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'CMORAN', with a stylized, cursive-like script.

Carmen Moran  
Director of Development Services

**COMMISSION FINDINGS:**

The Addison Planning and Zoning Commission, meeting in regular session on December 11, 2003, voted to recommend approval of the amendment to an existing Special Use Permit request for a restaurant, and an amendment to an existing SUP for the sale of alcohol for on-premises consumption, on application from Albert-Addison L.L.C. subject to the following conditions:

- the applicant shall submit a revised landscaping plan for approval by the Parks Director prior to the issuance of a building permit.

- the screening fence on the north side of the building shall be made of solid metal or stucco panels. The Building Official shall have final approval over the appearance of the fence.

- the restaurant shall not use the term "bar", "tavern", or any equivalent terms or graphic depictions that relate to alcoholic beverages, in exterior signs.

- if the electrical demand for the building increases over what is currently provided, the electrical service will have to be placed underground.

Voting Aye: Bernstein, Braun, Doepfner, Herrick, Jandura

Voting Nay: None

Absent: Benjet

## Memorandum

DATE: December 4, 2003  
TO: Carmen Moran, Director of Development  
FROM: Slade Strickland, Director of Parks & Recreation  
SUBJECT: **Case 1443-SUP/Pei Wei Asian Diner**

---

1. The plan does not show 20 percent landscaping as required by the landscape regulations; however, the property is pre-existing to the regulations and there are too many site constraints for the plan to meet this requirement. All available green space areas will need to be landscaped with the tree/plant quantities specified in the landscape regulations.
2. The street frontage tree requirement along Belt line Road and Addison Road is one tree for every 20' of street frontage, which would equate to 18 required trees. Only nine trees are shown on the plan.
3. If the 12' right-of-way requirement is approved along Addison Road, the landscape plan will need to reflect the revised landscape buffer width. Regardless of this 12' right-of-way requirement, the landscape plan along Addison Road will need to match the proposed streetscape plan for the future Addison Road widening project.
4. The final landscape and irrigation plans will need to be in accordance with the Landscape Regulations - Section 4. - Landscape and Irrigation Plan Submission.

To: Carmen Moran, Director Development Services

From: Lynn Chandler, Building Official

Date: December 2, 2003

Subject: Case 1443-SUP. Pei Wei Asian Diner.

Appendix B, Section XVI, G.2. of the Code of Ordinances of the Town of Addison requires all new electrical utility lines and services to be constructed underground. They may maintain the existing overhead service but they may not increase the number or size of the transformers on the pole or increase the number of or size of the overhead conductors from the pole to the building. Changes such as these would require the new service to be underground with pad mount type transformers or receive a variance from the Town Council. They may also reconfigure the conductors on the building.

**Carmen Moran**

---

**From:** Steve Chutchian  
**Sent:** Thursday, December 04, 2003 3:37 PM  
**To:** Carmen Moran  
**Subject:** RE: Review Comments for December 11th. P & J Meeting

-----Original Message-----

**From:** Steve Chutchian  
**Sent:** Thursday, December 04, 2003 9:40 AM  
**To:** Carmen Moran  
**Subject:** Review Comments for December 11th. P & J Meeting

The following items were reviewed and comments are submitted as follows:

**Case 1437-Z/CityHomes**

Each 20 ft. Firelane, Utility & Access Easement should be changed to a "20 ft. Firelane, Utility, Drainage & Access Easement" on the Preliminary Plat.

Preliminary development drainage and water/sewer plans must be converted into final civil design plans and specifications for construction. These plans must also be accompanied by comprehensive grading and paving plans.

Plat should reference Addison Circle in lieu of Addison Place.

Design of all facilities adjacent to Spectrum Drive should complement and be coordinated with proposed street improvements.

**Case 1443-SUP/Pei Wei Asian Diner/Final Plat/Pei Wei Addition**

Final plat must include right-of-way dedication of 12 ft. adjacent to the east line of Addison Road, in accordance with scheduled street widening improvements.

Civil design plans and specification must be approved by the Town for all proposed paving, drainage, grading, water, and sewer improvements on-site and off-site.

All landscaping, irrigation, driveway, and sidewalk improvements must be designed and constructed in accordance with proposed parkway improvements on Addison Road.

Should you have any questions, please let me know.

Steve Chutchian, P.E.  
Assistant City Engineer

Carmen Moran

---

From: Steve Chutchian  
Sent: Thursday, January 08, 2004 2:25 PM  
To: Carmen Moran  
Subject: FW: Case 1443-SUP/Pei Wei Asian Diner/Final Plat/Pei Wei Addition

-----Original Message-----

From: Steve Chutchian  
Sent: Thursday, December 11, 2003 1:11 PM  
To: Carmen Moran  
Subject: Case 1443-SUP/Pei Wei Asian Diner/Final Plat/Pei Wei Addition

Regarding the above mentioned case, the requirement for dedication of 12 ft. of right-of-way adjacent to the east line of Madison Road, may be eliminated. Staff has worked with the Engineer and determined that the proposed widening of Madison Road may be accomplished without this dedication.

Steve Chutchian, P.E.  
Assistant City Engineer

**ATTACHMENT #R4-4  
IS NOT AVAILABLE  
ELECTRONICALLY**

**Council Agenda Item: #R5**

**SUMMARY:**

Council approval is requested for an item related to the Town's continued participation in year five of the U.S. Department of Justice, Juvenile Accountability Block Grant (JABG) aimed at reducing juvenile crime. Council is asked to approve a \$772 cash match in order for the Town to be eligible for \$6,952 in JABG grant funding and to waive the \$6,952 to Dallas County for use in a Countywide integrated data processing system for the tracking, monitoring and prosecution of juvenile offenders.

**FINANCIAL IMPACT:**

Budgeted Amount:           -0-          

Cost:                   \$772          

The \$772 will be paid from the Police Department's 03 / 04 operating budget.

**BACKGROUND:**

In 1998 Addison began participating in the federally funded, Juvenile Accountability Block Grant program (JABG). The funds are earmarked for reducing juvenile crime. As participants we waive our share of the funds to Dallas County who administers a County wide integrated data processing system linking law enforcement, probation officials, prosecutors and Child Protective Services to better track and monitor juvenile offenders.

Each year we receive notice from the State advising us of the funds we are eligible to receive. This year we are eligible for \$6,952 with our cash match of \$772. The funds from all of the participating agencies are then combined to operate the countywide juvenile tracking system. Once the expenses of County system are satisfied we are offered the remaining balance of our contribution to use for purchasing equipment or software to investigate and prosecute juvenile offenders. Typically our portion of returned funds has averaged about 25% of the original monies awarded the Town.

**RECOMMENDATION:**

Staff recommends approval.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, APPROVING A JOINT APPLICATION WITH DALLAS COUNTY AND SURROUNDING CITIES FOR CONSIDERATION OF FUNDING THROUGH THE FEDERAL JUVENILE ACCOUNTABILITY BLOCK GRANT PROGRAM (JABG) AND WAIVING THE TOWN'S RIGHT TO APPLY.

WHEREAS, funding from the Juvenile Accountability Block Grant (JABG) is made available annually to State and local governments to develop programs that promote greater accountability in the juvenile justice system; and

WHEREAS, the Office of the Governor, Criminal Justice Division (CJD) administers the JABG for the State of Texas and has notified The Town of Addison of an award of \$6,952 from the FY 2003 JABG allocation, which is the fifth year of funding; and

WHEREAS, the award of JABG funds requires a local cash match, which will total \$772 for The Town of Addison; and

WHEREAS, a qualifying unit of local government may waive it's right to it's award and request those funds be awarded to and expended for it's benefit by a larger or contiguous unit of local government; and

WHEREAS, jurisdictions within Dallas County have in the first five years of JABG funding collaborated in using JABG funds to develop and implement an integrated data processing system linking law enforcement, prosecutors, probation officials, courts, and schools; and

WHEREAS, the Dallas County Juvenile Information System (JIS) is currently in operation and is proving to be an effective information-sharing system; and

WHEREAS, funding from the sixth year of the JABG will be used to continue the operation, maintenance, and development of the JIS; and

WHEREAS, Dallas County shall continue to serve as lead agency for the project and will submit a consolidated application for JABG funding to CJD; and

WHEREAS, The Town of Addison desires to waive it's right to apply for and

requests that it's award be awarded to Dallas County to be expended for it's benefit by participating in the collaborative effort and the Town of Addison authorizes Dallas County to submit a consolidated application for JABG funding to CJD for the purposes of developing and implementing an integrated data processing system; and

WHEREAS, the Town of Addison agrees to provide the required cash match, totaling \$772 to Dallas County for the collaborative effort; and

WHEREAS, the Town of Addison agrees to participate in the Juvenile Crime Enforcement Coalition created by Dallas County by appointing one or more representatives to serve on that coalition.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

THAT, the Town of Addison hereby waives it's right to apply for funding under the Juvenile Accountability Block Grant and requests that it's award be awarded to Dallas County, who will submit a consolidated application to the State of Texas, Office of the Governor, Criminal Justice Division, for funding under the Juvenile Accountability Block Grant program for the purposes of developing and operating an integrated data processing system for juvenile offender cases in Dallas County and the Town of Addison agrees to provide the required cash match of \$772 to Dallas County for the project. The Town of Addison further agrees to participate in the Juvenile Crime Enforcement Coalition created by Dallas County by appointing Don Franklin or his/her designee to serve on that coalition.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, this the 27th day of January 2004.

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Mayor

ATTEST:

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City Secretary

Council Agenda Item: #R6

**SUMMARY:**

This item is to request Council's approval of a contract with **Toshiba America Information Systems, Inc.** to purchase twenty-three (23) Tablet PCs. A RFP was released on December 23, 2003. Eighteen (18) proposals were received. A copy of the contract is attached.

**FINANCIAL IMPACT:**

Budgeted Amount: \$65,000

Cost: \$48,630.26

This amount is budgeted in the Information Technology Internal Service Fund.

**BACKGROUND:**

The existing laptops were purchased and installed in January of 1998. Since the original purchase, each department has been contributing to the Information Technology Internal Service Fund on an annual basis, based on the number of users. This fund allows the Town to replace systems including hardware and software on a regular basis in order to be adequately responsive to the increasing demands on the network. At this time we are replacing the thirty-six (36) existing laptops with twenty-three (23) Tablet PCs. Two (2) Tablet PCs will be assigned to each department. One will be assigned to the department head and the second one will be assigned either to the assistant or to department members on an as needed basis.

Attached are copies of the vendors list, their proposed cost and the contract for your review.

**RECOMMENDATION:**

Staff recommends that the Council authorize the City Manager to enter into a contract with **Toshiba America Information Systems, Inc.** in the amount of \$48,630.26.

**ATTACHED IS ITEM #R6-2**

**“CONTRACT”**

Sale Agreement

Contract No. \_\_\_\_\_

Dated January 28, 2004

This is an Agreement ("Agreement") by and between Toshiba America Information Systems, Inc., a California corporation, having its principal place of business at 9740 Irvine Blvd., hereinafter called SELLER, and the Town of Addison, Texas, having its principal place of business at 5300 Belt Line Road, Dallas, TX 75254, hereinafter called BUYER.

Witnesseth, that in consideration of the mutual undertakings herein contained, the parties agree as follows:

1. SALE: SELLER agrees to sell to BUYER and BUYER agrees to purchase from SELLER the machines and features listed below (referred to as the 'Equipment') in accordance with the terms and conditions specified herein.

See Exhibit 001 attached hereto and made a part hereof.

Total Sale Price is \$48,630.26

2. SALE PRICE: The Sale Price of the Equipment (and each portion thereof) is as shown on Exhibit 001. BUYER shall pay to SELLER the Sale Price for the Equipment delivered to BUYER in accordance with the terms hereof within thirty (30) days after the date of such delivery. A charge of 1 1/2% per month (or the rate otherwise permitted by law (such law being Chapter 2251, Subchapter B, Texas Government Code (as amended or superseded))), whichever is lower) will be due on the unpaid balance for any late payment.

3. DELIVERY: SELLER shall deliver to BUYER the Equipment thereof as may be requested by BUYER. Such Equipment thereof shall be delivered to BUYER no later than fourteen (14) days after the date of SELLER's receipt of BUYER's formal request or such other date as SELLER and BUYER may agree upon. Delivery shall be made by SELLER, and BUYER shall receive delivery of such Equipment thereof, at Buyer's location located at 16801 Westgrove Drive, Addison, TX 75001. If SELLER shall fail to make any delivery within the said fourteen (14) day period of time or such other period of time agreed upon by SELLER and BUYER, BUYER shall have the right to terminate this Agreement whereupon SELLER shall promptly refund all payments which it has received from BUYER for any portion of the Equipment not yet delivered to and accepted by BUYER.

Buyer assumes no liability for Equipment damaged while in transit and or delivered in a damaged or unacceptable condition. Seller shall be responsible for and handle all claims with carriers, and in case of damaged Equipment shall ship replacement Equipment immediately upon notification by Buyer of damage. The risk of loss of the Equipment shall not pass to Buyer until Buyer actually receives and takes possession of the Equipment at the point of delivery, after inspection, and acceptance of the Equipment by Buyer. Irrespective of any other provision hereof, BUYER shall bear the risk of damage from fire or the elements at such time as the Equipment has been delivered to BUYER at BUYER's location described in this paragraph. All shipping, installation and insurance costs shall be borne and promptly paid by SELLER.

4. CLOSING DATE: The closing shall take place within 30 days following the date of delivery of the Equipment. Closing shall mean when Buyer is obligated to pay SELLER for Equipment

5. If this Agreement is not executed by BUYER and returned to SELLER at its call center located at 910 Carver Tempe AZ 84284 on or before February 06, 2004, SELLER may terminate this Agreement with notice to BUYER.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and do each hereby warrant and represent that its signatory whose signature appears below has been and is on the date of this Agreement duly authorized by all necessary and appropriate corporate action to execute this Agreement.

The parties agree to all the terms and provisions set forth within the three (3) pages of this Agreement.

SELLER: Toshiba America Information Systems, Inc.

BUYER: Town of Addison

By: \_\_\_\_\_

By: \_\_\_\_\_

Authorized Signatory

6. **WARRANTY:** SELLER warrants that the Equipment will be eligible for manufacturer's maintenance at the time of delivery, and that the Equipment will be at current engineering change levels at the time of delivery. BUYER shall have the benefit of all applicable manufacturer warranties, and SELLER shall assign any such warranties to BUYER as may be necessary for BUYER to receive such benefit. Except as aforesaid, SELLER makes no warranty, express or implied, as to the merchantability or fitness for any particular purpose of the Equipment. SELLER will pack, seal and ship the Equipment in accordance with the procedures established by the manufacturer (or SELLER will cause the manufacturer to do so if such action is required to be performed by the manufacturer) in order for the Equipment to remain eligible for the manufacturer's maintenance agreement at the time of delivery (and BUYER agrees to cause the Equipment to be unsealed, unpacked and reinstalled by the manufacturer if such action is required to be performed by the manufacturer in order for the Equipment to be covered by the manufacturer's maintenance agreement). SELLER is manufacturer of Tablet PC and Port Replicator.

7. **TITLE:** Title to the Equipment will be free and clear of all liens, claims and encumbrances of any kind and, unless otherwise provided for herein, shall vest in BUYER upon payment of the full Sale Price required to be paid pursuant to paragraph 2 hereof.

8. **CONDITION OF EQUIPMENT:** BUYER, or its agent, shall have the right to inspect and test the Equipment up to and including the date of delivery for general appearance and operating condition and also to inspect the Equipment's logbook. All Equipment delivered by SELLER shall be new. Buyer reserves the right to reject or refuse acceptance of Equipment which is not in accordance with the Town's instructions, specifications, drawings and data, or any warranties and representations (express or implied) in connection with the Equipment, or Equipment shipped contrary to instructions, or in excess of the quantities herein provided. Equipment not accepted will be returned to Seller at Seller's sole risk and expense. Any acceptance by Buyer, even if nonconditional, shall not be deemed a waiver or settlement of any defect in such Equipment. Payment for any Equipment shall not be deemed an acceptance thereof. The remedies set forth herein shall not be exclusive. At time of delivery the Equipment will have all logic manuals, cables, connectors, shields, kick-plates, covers, I.R. books and any other accessories, which were originally supplied by the manufacturer. SELLER shall be liable for the replacement costs of any of the foregoing if missing at time of delivery.

9. **TAXES:** BUYER will be responsible for and shall pay all applicable taxes, fees, levies, imposts, duties, withholdings or other charges (including any interest and penalties thereon), if any, imposed by any taxing authorities by reason of the sale and delivery herein provided for.

10. **NOTICES:** Any notice provided for herein shall be in writing and either hand-delivered or sent by registered or certified mail, postage prepaid, addressed to the party for which it is intended at the address set forth in the first paragraph of this Agreement or to such other address as either party shall from time to time indicate in writing, said notice to be deemed to be effective upon receipt or three days from the date of mailing, whichever occurs first.

11. **EXTRA FEATURES:** If the Equipment on delivery contains any features not specified in this Agreement, BUYER shall have the right to purchase such features at a price agreed upon between BUYER and SELLER. If BUYER elects not to purchase such features, BUYER hereby grants SELLER at SELLER's option and expenses the right to remove any of such features. Such removal shall be performed by the manufacturer or another party acceptable to BUYER, upon the request of SELLER, at a time convenient to BUYER, provided that BUYER shall not unreasonably delay the removal of such features.

## 12. MISCELLANEOUS

- A. This Agreement constitutes the entire agreement between SELLER and BUYER with respect to the sale and purchase of the Equipment and no representation or statement not contained herein shall be binding upon SELLER or BUYER as a warranty or otherwise unless in writing and executed by the party to be bound thereby.
- B. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Seller shall not, and shall have no right or power, without the prior written consent of the Town of Addison, Texas to assign, convey, sell, or otherwise transfer (together, "convey" or "conveyance") this Agreement or any part hereof to any other person or entity, and any such conveyance without the prior written consent of the Town of Addison shall be null and void.
- C. In no event shall SELLER be liable to BUYER for any indirect, special or consequential damages in connection with or arising under this Agreement.
- D. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas including all matters of construction, validity, performance and enforcement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, construction, interpretation, validity, performance, and enforcement of this Agreement. In the event of any action under this Agreement, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. Seller and Buyer shall at all times comply in all material respects with all applicable laws, rules, and regulations applicable to this Agreement.

- E. This Agreement is subject to acceptance by BUYER at its offices referred to in the preamble, and shall only become effective on the date thereof.
- F. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and of equal force and effect.
- G. Any liabilities or obligations of Seller or Buyer for acts or omissions prior to the completion or termination of this Agreement, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) completion or termination of this Agreement, shall survive such completion or termination.
- H. The failure by either party to exercise any right, power, or option given to it by this Agreement, or to insist upon strict compliance with the terms of this Agreement, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this Agreement are cumulative to any other rights or remedies, which may be granted by law.

### EXHIBIT 001

- |    |   |                        |
|----|---|------------------------|
| 23 | Kingston 256 MB USB 2.0 Flash Drive   | Unit Price: \$84.00    |
| 23 | Toshiba Protégé M200 Tablet PC  | Unit Price : \$2000.00 |
|    | <ul style="list-style-type: none"> <li>• Intel Pentium M 1.5 GHz</li> <li>• Windows XP Tablet PC edition</li> <li>• Intel Chipset</li> <li>• 512 MB PC2100 DDR SDRAM</li> <li>• 40 GB HDD</li> <li>• 12.1" SXGA+ PolySilicon TFT Display</li> <li>• nVidia GeForce FX Go 5200 with 32MB VRAM</li> <li>• (1) PC Card Slot</li> <li>• (1) SD Slot</li> <li>• (1) RGB Port</li> <li>• (2) USB 2.0 Ports</li> <li>• (1) 10/100 Ethernet RJ45 Port</li> <li>• (1) V.92 modem RJ11 Port</li> <li>• (1) Mic Port, (1) Head Phone Port</li> <li>• WiFi 802.11b network interface card, built-in</li> <li>• Port Replicator 3 interface</li> </ul> |                        |
| 23 | 3 Year support with Accidental Damage coverage  | Unit Price: \$418.26   |
| 1  | Port Replicator 3, featuring Slim Select Bay which can hold DVD-CDRW  | Unit Price: \$280.00   |

**Tablet PCs  
BID NO 04-04**

**#R6-3**

**DUE: 2:00 PM December 11, 2003**

BIDDER	SIGNED	bond/ck	23 Scan disk	23 Tablet PC	Port Replicator	DVD/CDRW	**additional charges	S&H	Total Bid	Other brand	Cashiersck\$
Toshiba	Y		\$2,001.00	\$46,000.00	\$329.00			\$0.00	\$48,330.00	Kingston	
OM Office Supply	Y		\$1,012.00	\$52,210.00	\$160.00			\$0.00	\$53,382.00		
Tech Depot	Y	B	\$1,012.00	\$52,853.08	\$721.29				\$54,586.37		
Micro Supply	Y		\$1,058.00	\$52,785.00	\$375.00		\$765.00	\$0.00	\$54,983.00		
CDW	Y	B	\$1,033.85	\$50,475.80	\$315.73	\$250.00	\$3,171.70	\$0.00	\$55,247.08		
CompUSA	Y		\$1,038.22	\$54,510.00	\$311.47			\$210.00	\$56,069.69		
Symbolic Technology	Y		\$1,127.00	\$54,257.00	\$768.00			\$0.00	\$56,152.00		
Computerland 547	Y		\$1,035.00	\$51,290.00	\$316.00	\$408.00	\$3,565.00	\$0.00	\$56,614.00		
Delcom	Y		\$1,909.00	\$54,625.00	\$289.00			\$73.00	\$56,896.00		
Tech Svc Resource	Y	B	\$1,240.28	\$52,108.18	\$312.17	\$390.84	\$3,235.75	\$0.00	\$57,287.22		
Advanced Tech Entp	Y		\$1,198.30	\$55,568.00	\$742.00			\$0.00	\$57,508.30		
Absolute Systems	Y	C	\$1,104.00	\$55,706.00	\$702.00				\$57,512.00		\$3,609.00
M&A Technology	Y	B	\$1,081.00	\$58,029.00	\$320.00			\$0.00	\$59,430.00		
Forsythe	Y	B	\$1,150.00	\$55,568.00	\$182.00		\$3,358.00	\$0.00	\$60,258.00		
AC Cable	Y		\$1,026.03	\$55,231.28	\$321.15	\$419.12	\$3,312.92		\$60,310.50		\$3,015.53
EnPointe Tech	Y		\$1,097.33	\$67,921.76	\$168.00				\$69,187.09		
PCS	Y		\$1,242.00	\$78,867.00	\$325.00				\$80,434.00	Panasonic	
Multiwave/CLT	Y	C	\$1,023.50						\$1,023.50		\$55.00

*Minok Suh*

Minok Suh, Purchasing Coordinator

\*\* charges for additional parts or warranty

*Corey Gayden*

Corey Gayden, Witness

**Council Agenda Item: #R7**

**SUMMARY:**

This item is for the consideration of a resolution approving the purchase of a 0.0790 acre tract of land for a temporary construction easement and approving the fee simple purchase of a 0.1934 acre tract of land for permanent right-of-way, both tracts generally located at 4455 Belt Line Road, approving a contract of sale for said purchases, and providing an effective date.

**FINANCIAL IMPACT:**

Budgeted Amount: N/A  
Cost: \$60,868.65  
Source of Funds: Funds are available from Year 2002 General Obligation Bond Program, Project No. 83300.

**BACKGROUND:**

The right-of-way acquisition process is currently underway on the proposed Arapaho Road, Phase III project. Approximately 0.1934 acre of permanent right-of-way adjacent to the proposed extension of Arapaho Road (see attached Parcel 5 map) is required as part of the proposed roadway improvements. A 0.0790 acre temporary construction easement (see attached Parcel 5-TE map) is also necessary to complete the project. This parcel is a portion of Lots 4 & 5, Addison Restaurant Park, and is owned by Heritage Inn Number XIII/Tharaldson Development. In January 2002, the firm of Evaluation Associates performed an appraisal of the value of the proposed fee-simple taking. The appraisal of the 0.1934 acre of right-of-way and 0.0790 acre of temporary construction easement on this site resulted in a Total Compensation value of \$60,868.65. This value represents a reduction in compensation that was originally submitted to Council, in the amount of \$140,700.00, for consideration in June 2002. Public Works staff determined that a lesser amount of right-of-way acquisition was actually necessary at this location, in order to complete project requirements.

**RECOMMENDATION:**

It is recommended that Council approve a resolution for the purchase of a 0.0790 acre tract of land for a temporary construction easement and approve the fee simple purchase of a 0.1934 acre tract of land for permanent right-of-way, both tracts generally located at 4455 Belt Line Road, approve a contract of sale for said purchases, and providing an effective date.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. R \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, APPROVING THE PURCHASE OF A TEMPORARY CONSTRUCTION EASEMENT IN A 0.0790 TRACT OF LAND AND APPROVING THE FEE SIMPLE PURCHASE OF A 0.1934 ACRE TRACT OF LAND FOR PERMANENT RIGHT-OF-WAY, BOTH TRACTS GENERALLY LOCATED AT 4455 BELT LINE ROAD; APPROVING A CONTRACT OF SALE FOR SAID PURCHASES; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the proposed Arapaho Road Extension Project is currently underway, which includes right-of-way acquisitions; and

**WHEREAS**, a tract of land approximately 0.1934 acres in size (as described in Exhibit B to the Contract of Sale attached hereto and incorporated herein) is required for permanent right-of-way in connection with the proposed extension to Arapaho Road; and

**WHEREAS**, a tract of land approximately 0.0790 acres in size (as described in Exhibit C to the Contract of Sale attached hereto and incorporated herein) is required for the construction of said right-of-way; and

**WHEREAS**, the owner of said tracts has agreed to convey the necessary easement and property to the Town of Addison for \$60,868.65; and

**WHEREAS**, the owner has executed a Contract of Sale regarding the conveyance of such easement and property for said amount subject to approval by the City Council, which agreement is attached hereto and incorporated herein; Now, Therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**Section 1.** That the City Council has determined that \$60,868.65 is reasonable compensation for the fee simple tract and temporary construction easement described in Exhibits B and C of the Contract of Sale attached hereto and incorporated herein to be acquired and all damages to the property remaining, and does hereby authorize the acquisition of said property and easement for the construction and extension of Arapaho Road.

**Section 2.** That the City Council does hereby approve the Contract of Sale attached hereto regarding the purchase of the property and the easement described herein, and hereby authorizes the City Manager to take such other and further action as may be necessary to acquire the property.

**Section 3.** That the City Finance Director be and is hereby authorized to draw a check in favor of Heritage Inn Number XIII, Limited Partnership, or the current owner(s) of record, in the amount of \$60,868.65.

**Section 4.** That this Resolution shall take effect immediately from and after its passage.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this 27<sup>th</sup> day of January, 2004.

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R. Scott Wheeler, Mayor

ATTEST:

---

Carmen Moran, City Secretary

APPROVED AS TO FORM:

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Ken C. Dippel, City Attorney

## CONTRACT OF SALE

This Contract of Sale (this "Contract") is made and entered into by and between Heritage Inn Number XIII, Limited Partnership (the "Seller") and the Town of Addison, Texas (herein sometimes referred to as the "Buyer").

### WITNESSETH:

**WHEREAS**, Seller is the sole owner of the real property located in the Town of Addison and described in Exhibit A attached hereto and incorporated herein (the **Entire Tract**); and

**WHEREAS**, the Town of Addison intends to construct an extension of Arapaho Road through the Town (the **Arapaho Road Phase III Extension**), part of which will be located upon and across a portion of the Entire Tract (which portion is described in Exhibit B attached hereto and incorporated herein (and referred to herein as the **Property**)); and

**WHEREAS**, during and in connection with the construction of the part of the Arapaho Road Phase III Extension which will be located upon and across the Property, the Town will need to use another portion of the Entire Tract (the **Easement Area**, described in Exhibit C attached hereto and incorporated herein) for temporary construction purposes (the **Temporary Construction Easement**); and

**WHEREAS**, Buyer desires to acquire the Property for street right-of-way and other public purposes and to acquire the Temporary Construction Easement in connection with the construction of the Arapaho Road Phase III Extension, and Seller desires to sell and convey the Property and the Temporary Construction Easement to Buyer; and

**WHEREAS**, Seller and Buyer desire to enter into this Contract setting forth the terms and conditions of such sale;

**NOW, THEREFORE**, Seller and Buyer, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

### **ARTICLE I** **Defined Terms**

**1.1 Definitions.** As used herein, the following terms shall have the meanings indicated:

**"Closing"** means the consummation of the purchase of the Property by Buyer from Seller in accordance with Article VII.

**"Closing Date"** means the date specified in Section 7.1 on which the Closing is to be held.

**"Deed"** means the Warranty Deed to be executed by Seller in favor of Buyer, the form of which is attached hereto as Exhibit D and incorporated herein.

**"Easement Area"** means the real property described in Exhibit C attached hereto and incorporated herein.

**"Effective Date"** means the date on which Buyer and Seller have both fully executed this Contract.

**"Entire Tract"** means the real property described in Exhibit A attached hereto and incorporated herein.

**"Permitted Exceptions"** means, with respect to the Property, all validly existing and presently recorded public utility easements and building set back lines.

**"Property"** means that certain tract of land described in Exhibit B, attached hereto and incorporated herein, together with any building or other structure or improvements, including, without limitation, fixtures, presently situated thereon, and together with all privileges, easements, and other rights appurtenant thereto.

**"Purchase Price"** means the total consideration to be paid by Buyer to Seller for the purchase of the Property as set forth in Section 3.1.

**"Remainder Tract"** means the Entire Tract save and except the Property.

**"Temporary Construction Easement"** means the Temporary Construction Easement on, across, in, over, under, and through the Easement Area as described in, and in the form attached hereto as, Exhibit E.

**"Title Company"** means Republic Title of Texas, Inc., 2626 Howell Street, 10<sup>th</sup> Floor, Dallas, Texas 75204.

**1.2 Other Defined Terms.** Certain other defined terms shall have the respective meanings assigned to them elsewhere in this Contract.

## **ARTICLE II**

### **Agreement of Purchase and Sale**

**2.1 Agreement.** On the terms and conditions stated in this Contract, Seller hereby agrees to sell and convey the Property and the Temporary Construction Easement to Buyer, and Buyer, in consideration of the performance of the agreements of Seller contained in this Contract and in reliance on the representations and warranties of Seller contained in this Contract, hereby agrees to purchase the Property and the Temporary Construction Easement from Seller.

## **ARTICLE III**

### **Purchase Price**

**3.1 Purchase Price.** The Purchase Price to be paid by Buyer to Seller is \$58,975.00 for the Property and \$1,893.65 for the Temporary Construction Easement, for a total Purchase Price of \$60,868.65. The Purchase Price is payable by Buyer in cash at Closing.

**ARTICLE IV**  
**Representations, Warranties and Covenants**

**4.1 Seller's Representations and Warranties.** Seller represents and warrants to Buyer as follows:

(a) Seller has the full right, power, and authority to sell and convey the Property and the Temporary Construction Easement as provided in this Contract and to carry out Seller's obligations hereunder, and all requisite action necessary to authorize Seller to enter into this Contract and to carry out its obligations hereunder has been, or by the Closing will have been, taken.

(b) Seller has not received notice from any governmental authority that there are, to the best of Seller's information, knowledge, and belief, there does not exist, and Seller has not used or deposited (and to the best of Seller's knowledge no prior owner or current or prior tenant has used or deposited), any Hazardous Substances, as hereinafter defined, at, on, or under the Property or the Easement Area in violation of the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendment and Reauthorization Act, the Resource Conservation Recovery Act, the Federal Water Pollution Control Act, the Federal Environmental Pesticides Act, the Clean Water Act, the Clean Air Act, all so-called Federal, State and Local "Superfund" and "Superlien" statutes, and all other statutes, laws, ordinances, codes, rules, regulations, orders and decrees regulating, relating to or imposing liability (including strict liability) or standards of conduct concerning any hazardous substances (collectively the "Hazardous Substance Laws"). For purposes of this Contract, the terms Hazardous Substances shall mean and include those elements or compounds which are contained in the list of Hazardous Substances adopted by the United States Environmental Protection Agency and the list of toxic pollutants designated by Congress or the Environmental Protection Agency or under any Hazardous Substance Laws. Hazardous Substances shall also include Radon gas and asbestos.

(c) The Property and the Easement Area and all parts thereof are not now subject to any litigation, or other legal or administrative proceedings, and Seller has no knowledge of any facts that might result in any such litigation or proceedings. Seller has not received notice from any governmental or quasi-governmental agency requiring the correction of any condition with respect to the Property or the Easement Area, or any part thereof, by reason of a violation of any federal, state, county or city statute, ordinance, code, rule or regulation or stating that any investigation is being commenced or is contemplated regarding any of the foregoing.

**4.2 Buyer's Representations and Warranties.** Buyer has the full right, power, and authority to buy the Property and to acquire the Temporary Construction Easement as provided in this Contract and to carry out Buyer's obligations hereunder.

**ARTICLE V**  
**Title**

**5.1 Title Policy.** At the Closing, Seller, at Buyer's sole cost and expense, shall cause a standard Texas owner's policy of title insurance (the "Title Policy") to be furnished to Buyer. The Title Policy shall be issued by the Title Company in the amount of \$60,868.65, and insuring that the Buyer has indefeasible fee simple title to the Property. The Title Policy may contain

only the standard printed exceptions and the Permitted Exceptions (except as otherwise provided in Paragraph 7.2 and other provisions hereof).

## **ARTICLE VI**

### **Conditions to Buyer's Obligations**

**6.1 Conditions to Buyer's Obligations.** The obligations of Buyer hereunder to consummate the transaction contemplated hereby are subject to the satisfaction, as of the Closing, of each of the following conditions (any of which may be waived in whole or in part in writing by Buyer at or prior to the Closing):

(a) All representations and warranties of the Seller shall be true on and as of the Closing Date.

(b) The Property and the Easement Area, or any part thereof, shall not have been and shall not be threatened to be affected in any way as a result of litigation, any action by the United States or any other governmental authority, flood or act of God.

## **ARTICLE VII**

### **Closing**

**7.1 Date and Place of Closing.** The Closing shall take place in the offices of the Title Company. The Closing Date shall be thirty (30) days after the Effective Date. The Closing Date may be extended or accelerated by the mutual agreement of the parties.

**7.2 Items to be Delivered at the Closing.**

(a) **Seller.** At the Closing, Seller shall deliver or cause to be delivered to Buyer the following items:

(i) The Deed, duly executed and acknowledged by Seller, subject only to the Permitted Exceptions;

(ii) The Temporary Construction Easement, duly executed and acknowledged by Seller;

(iii) An affidavit, in a form reasonably acceptable to Buyer, in compliance with Section 1445 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder, stating under penalty of perjury the Seller's United States identification number and that Seller is not a non-resident alien; provided, however, that if Seller fails to deliver this affidavit, Buyer shall be entitled to withhold from the Purchase Price and pay to the Internal Revenue Service the amounts required by Section 1445, and applicable regulations promulgated thereunder;

(iv) The Title Policy;

(v) Sufficient evidence that Seller has authority to sell the Property and to convey the Temporary Construction Easement and to execute all closing documents on behalf of Seller; and

(vi) Such other documents as the Title Company may request in order to close this Contract and issue the Title Policy (including, without limitation, such affidavits as the Title Company may reasonably request in order that the Title Policy will not contain exceptions for parties in possession or tenants in possession under unrecorded leases, or to the extent necessary to determine that the Seller is not the same individual as may be identified in any abstracts of judgment, bankruptcy filings, that there are no unpaid debts for work that has been done or materials furnished in connection with the Property or the Easement Area and that there are no unrecorded mechanic's or materialmen's liens upon the Property or the Easement Area, etc.).

(b) **Buyer.** At the Closing, Buyer shall deliver to Seller:

(i) The Purchase Price; and

(ii) Such other documents as the Title Company may request in order to close this Contract and issue the Title Policy.

7.3 **Property Taxes.** Seller shall assume the obligation to pay property taxes and assessments for the current year 2003 through the date of closing.

7.4 **Possession.** At Closing, Seller shall deliver possession of the Property to Buyer. Possession of the Easement Area by the Town of Addison shall be as set forth and in accordance with the Temporary Construction Easement.

7.5 **Costs of Closing.** Buyer shall pay all recording fees attributable to the transfer of title to the Property and the conveyance of the Temporary Construction Easement and all of the closing or escrow fees of the Title Company. Each party shall pay its own attorneys' fees and expenses.

## **ARTICLE VIII**

### **Post-Closing Obligations**

8.1 **Access.** Buyer and Seller hereby agree that Seller shall have a single point of ingress and egress between the Remainder Tract and the completed Arapaho Road Phase III Extension (the **Access**) which shall be located at or about that location shown on the preliminary drawing of the associated improvements attached hereto as **Exhibit F.** Buyer shall provide all necessary engineering and construction improvements in connection with the access curb cut and the associated improvements; provided, however, that matters related to the Access, including, without limitation, the location of the Access and its dimension, may be adjusted, modified, or reconfigured in the sole discretion of the Town of Addison after notice to Seller. This provision shall not be interpreted to limit the authority of the Town with respect to the design or use of its streets.

**ARTICLE IX**  
**Defaults and Remedies**

**9.1 Seller's Defaults; Buyer's Remedies.** In the event that Seller should fail to consummate the transaction contemplated herein for any reason, except Buyer's default, Buyer, as its sole and exclusive remedy, may either: (i) terminate this Contract by written notice delivered to Seller on or before the Closing Date, or (ii) enforce specific performance of this Contract against Seller requiring Seller to convey the Property and the Temporary Construction Easement to Buyer. Buyer shall also be entitled to pursue condemnation of the Property and the Temporary Construction Easement.

**9.2 Buyer's Default; Seller's Remedies.** In the event that Buyer should fail to consummate the transaction contemplated herein for any reason, except default by Seller or the nonsatisfaction of any of the conditions to Buyer's obligations, set forth herein, Seller, as its sole and exclusive remedy, may terminate this Contract by written notice delivered to Buyer on or before the Closing Date.

**ARTICLE X**  
**Miscellaneous**

**10.1 Notices.** All notices, demands, requests, and other communications required or permitted hereunder shall be in writing, and shall be deemed to be delivered, upon the earlier to occur of (a) actual receipt, and (b) upon the deposit of the original in a regularly maintained receptacle for the United States mail, registered or certified, postage prepaid, addressed as follows:

**Seller:**

Mark Knutson  
Tharaldson Companies  
1201 Page Drive  
Fargo, North Dakota 58103

**Buyer:**

The Town of Addison  
P.O. Box 9010  
5300 Belt Line Road  
Addison, Texas 75001-9010  
Attn: Carmen Moran

**With a copy to:**

Angela K. Washington  
Cowles & Thompson, P.C.  
901 Main Street, Suite 4000  
Dallas, Texas 75202

**10.2 Governing Law.** This Contract is being executed and delivered, and is intended to be performed in the State of Texas and the laws of Texas govern the validity, construction, enforcement, and interpretation of this Contract.

**10.3 Entirety and Amendments.** This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Property, the Temporary Construction Easement, and other matters set forth herein, and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

**10.4 Parties Bound.** This Contract is binding upon and inures to the benefit of Seller and Buyer, and their respective heirs, personal representatives, successors, and assigns.

**10.5 Further Acts.** In addition to the acts and deeds recited in this Contract and contemplated to be performed, executed, and/or delivered by Seller to Buyer, Seller and Buyer agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at the Closing or after the Closing any and all further acts, deeds, and assurances as are reasonably necessary to consummate the transactions contemplated hereby.

**10.6 Survival.** Except as otherwise provided herein, all warranties, representations and agreements contained herein shall survive the Closing hereof.

**10.7 Counterpart Execution.** This Contract may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

**10.8 Assignment.** Buyer shall have no power or right to assign this Contract without the prior written consent of Seller.

**10.9 Maintenance of the Property.** Between the Effective Date and the Closing, Seller shall:

(a) Maintain the Property in good repair, reasonable wear and tear accepted, except that in the event of a fire or other casualty, damage or loss, Seller shall have no duty to repair said damage other than as provided in this Contract;

(b) Advise Buyer promptly of any litigation, arbitration or administrative hearing concerning or affecting the Property of which Seller has knowledge or notice;

(c) Immediately notify Buyer of any material injury or damage to the Property or any portion thereof;

(d) Not, without the prior written consent of the Buyer, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the property which are not delinquent) security interest, encumbrance or charge, or conditional sale or other title retention document, other than the Permitted Exceptions for matters that will be released or bonded around, at or prior to Closing, and should any of the foregoing become attached hereafter

in any manner to any part of the Property without the prior written consent of Buyer, Seller shall cause the same to be promptly discharged and released; and

(e) Not and shall use best efforts not to allow and permit the release of Hazardous Materials of any kind in, under, or above the improvements or into or onto the surface water, ground water, soil or subsurface of the Property.

Executed: June 10<sup>th</sup>, 2003 **SELLER:**

Heritage Inn Number XIII, Limited Partnership

By: Midwest Heritage Inn, Inc., its General Partner

By:

Gary Tharaldson  
Gary Tharaldson, President

Executed: June 12, 2003 **BUYER:**

Town of Addison, Texas

By:

R. Whitehead  
Ron Whitehead, City Manager

## EXHIBIT A

### PROPERTY DESCRIPTION

BEING a tract of land situated in the Edward Cook Survey, Abstract No. 326, Dallas County, Texas, said tract being a part of the Addison Restaurant Park, an Addition in the City of Addison, Texas as recorded in Volume 88066, Page 4219, Map Records, Dallas County, Texas, and being more particularly described as follows:

COMMENCING at a  $\frac{1}{2}$ " iron rod found at the Northeast corner of Addison Oaks Addition, Lot 3, an Addition in the City of Addison as recorded in Volume 90012, Page 3378, Map Records, Dallas County, Texas, said iron rod also being situated in the West line of Lot 1, Block 1, of Beltwood Reservoir Addition, an addition in the City of Addison as recorded in Volume 90012, Page 3386, Map Records, Dallas County, Texas, said iron rod further being N 00° 43' 00" E, a distance of 400.34 feet from the North line of Beltline Road (a 100' ROW);

THENCE: N 00° 43' E, a distance of 70.85 feet to a  $\frac{1}{2}$ " iron rod set for corners and being the TRUE PLACE OF BEGINNING;

THENCE: N 89° 51' 01" W, a distance of 397.64 to a  $\frac{1}{2}$ " iron rod set in the East line of Lot 1, Addison Oaks Addition, an addition in the City of Addison, as recorded in Volume 89166, Page 1974, Map Records, Dallas County, Texas;

THENCE: N 00° 08' 59" E, a distance of 21.50 feet along the East line of Lot 1, Addison Oaks Addition to a  $\frac{1}{2}$ " iron rod found at the Northeast corner of said Lot 1, Addison Oaks Addition;

THENCE: N 89° 51' 01" W, along the North line of Lot 1, Addison Oaks Addition 300.00 feet to a  $\frac{1}{2}$ " iron rod found in the East line of Roadway Inn Addition, an addition in the City of Addison, as recorded in Volume 81052, Page 775, Map Records, Dallas County, Texas;

THENCE: N 00° 08' 59" W, along the East line of the Roadway Inn Addition, a distance of 221.05 feet to the Northeast Corner of said Addition, also being in the South ROW line of Arapaho Road (a 60' ROW);

THENCE: N 86° 21' 00" E, a distance of 526.99 along the South ROW line of Arapaho Road to a  $\frac{1}{2}$ " iron rod set for angle;

THENCE: N 80° 53' 00" E, along the South line of Arapaho Road, a distance of 177.16 feet to a  $\frac{5}{8}$ " iron rod found for corners in the West line of Beltwood Reservoir Addition;

THENCE: S 00° 43' 00" W, along the West line of said Beltwood Reservoir Addition, a distance of 306.16 feet to the PLACE OF BEGINNING and Containing 4.1525 acres of land

97018 00075

EXHIBIT B

Parcel 5  
Field Note Description  
Arapaho Road Project  
Town of Addison  
Dallas County, Texas

BEING a description of a 0.1934 acre (8,425 square foot) tract of land situated in the Edward Cook Survey, Abstract Number 326, Town of Addison, Dallas County, Texas, and being a portion of a called 4.1525 acre tract of land as conveyed to Heritage Inn Number XIII as evidenced by the deed recorded in Volume 97018, Page 00073 of the Deed Records of Dallas County, Texas, also being a portion of "Lots 4 & 5, Block 1, Addison Restaurant Park", a addition to the Town of Addison as evidenced by the plat recorded in Volume 97209, Page 01069 of said Deed Records, said 0.1934 acre tract of land being more particularly described by metes and bounds as follows;

COMMENCING at a 5/8 inch iron rod found for the common Northeast corners of said called 4.1525 acre tract and a 24 foot wide right of way dedication as evidenced by said plat of "Lots 4 & 5, Block 1, Addison Restaurant Park", Southeast corner of a 60 foot wide right of way dedication as evidenced by the plat of Addison Restaurant Park, an addition to the Town of Addison as evidenced by the plat recorded in Volume 88066, Page 4219 of said Deed Records, and Northwest corner of Lot 1, Block A of Beltwood Reservoir, an addition to the Town of Addison as evidenced by the plat recorded in Volume 90012, Page 3386 of said Deed Records, said point also being in the West line of a called 19.01 acre tract of land conveyed to the City of Dallas as evidenced by deed recorded in Volume 4942, Page 629 of said Deed Records;

THENCE, SOUTH 00°12'19" WEST (called South 00°43'00" West), along the common East line of said called 4.1525 acre tract and West line of said called 19.01 acre tract, a distance of 24.40 feet to the Southeast corner of said 24 foot wide right of way dedication;

THENCE, SOUTH 80°11'36" WEST (called North 80°53'00" East), departing said common line and along the South line of said 24 foot wide right of way dedication, a distance of 19.76 feet to a 5/8 inch iron rod set in a curve of the proposed South right of way line of Arapaho Road for the POINT OF BEGINNING of the herein described tract;

EXHIBIT B

PARCEL 5 - ARAPAHO ROAD PROJECT

THENCE, SOUTHWESTERLY, departing said line and along the proposed South right of way line of Arapaho Road and the arc of a non-tangent curve to the right having a radius of 1,177.92 feet, a central angle of  $18^{\circ}35'31''$ , a chord bearing South  $80^{\circ}43'26''$  West for 380.55 feet, passing at an arc distance of 290.95 feet the common West line of said Lot 5 and East line of said Lot 4, continuing for a total arc distance of 382.22 feet to a 5/8 inch iron rod set for the point of tangency of said curve;

THENCE, NORTH  $89^{\circ}58'49''$  WEST, continuing along said proposed South right of way line of Arapaho Road, a distance of 263.14 feet to a 5/8 inch iron rod set in the South line of said 24 foot wide right of way dedication;

THENCE, NORTH  $85^{\circ}49'17''$  EAST (called North  $86^{\circ}21'00''$  East), departing said line and along the South line of said 24 foot wide right of way dedication, passing at a distance of 355.11 feet the common East line of said Lot 4 and West line of said Lot 5, continuing for a total distance of 493.84 feet to an angle point;

THENCE, NORTH  $80^{\circ}11'36''$  EAST (called North  $80^{\circ}53'00''$  East), continuing along said line, a distance of 148.35 feet to the POINT OF BEGINNING;

CONTAINING an area of 0.1934 acres or 8,425 square feet of land within the metes recited.

All bearings are referenced to the North Right of Way line of Centurion Way, called S  $89^{\circ}51'55''$  E, according to the final plat of Lot 3, Surveyor Addition, recorded in Vol. 77173, Page 135, Deed Records of Dallas County, Texas.

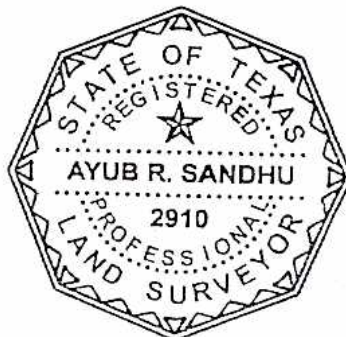
A plat of even survey date herewith accompanies this description.

I, Ayub R. Sandhu, a Registered Professional Land Surveyor, hereby certify that the legal description hereon and the accompanying plat represent an actual survey made on the ground under my supervision.

Ayub R. Sandhu 2-28-03

Ayub R. Sandhu, R.P.L.S.

Texas Registration No. 2910



# EXHIBIT B

## EDWARD COOK SURVEY A-326

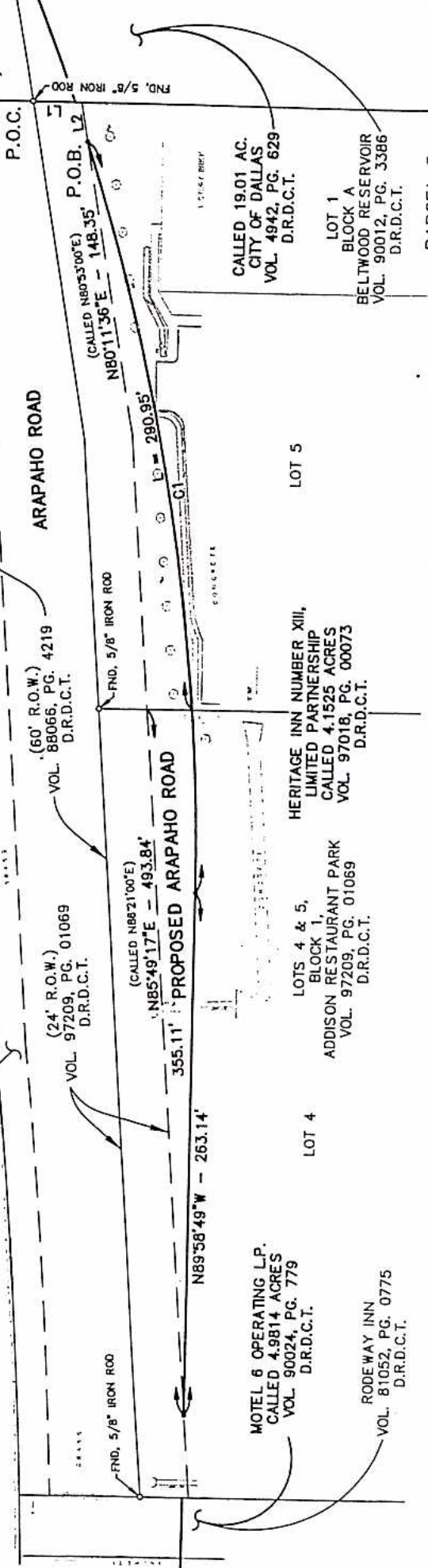
ARAPAHO ROAD  
(VARIABLE R.O.W.)  
VOL. 4942, PG. 629  
D.R.D.C.T.

LINE TABLE				
LINE	BEARING	CALLED	DIST	CALLED
L1	S 00°12'19" W	S00°43'00" W	24.40'	-
L2	S 80°11'36" W	N80°53'00" E	19.76'	-

CURVE TABLE			
CURVE	DELTA	RADIUS	CHORD
C1	18°35'31"	1177.92'	382.22'
			S80°43'26" W - 380.55'



15' WATER EASEMENT



### NOTES:

ALL EASEMENTS SHOWN ARE TAKEN FROM THE PLATS INDICATED HEREON. THE SURVEYOR DID NOT ABSTRACT THE SUBJECT PROPERTY SO ALL EASEMENTS MAY NOT BE SHOWN.

ALL BEARINGS ARE REFERENCED TO THE NORTH RIGHT OF WAY LINE OF CENTURION WAY, CALLED S 89°51'55\" E, ACCORDING TO THE FINAL PLAT OF LOT 3, SURVEYOR ADDITION, RECORDED IN VOL. 77173, PAGE 135, D.R.D.C.T.

A LEGAL DESCRIPTION OF EVEN SURVEY DATE HERewith ACCOMPANIES THIS PLAT.

- DENOTES A FOUND POINT AS INDICATED
- DENOTES A 5/8\" IRON ROD SET UNLESS OTHERWISE NOTED
- PROPOSED RIGHT OF WAY LINE

APPROVED FOR RECORD  
JAN 11 2010  
COUNTY CLERK  
DALLAS COUNTY, TEXAS  
*Agnes K. Gandy*  
2-28-03

PARCEL 5  
A PLAT OF A  
0.1934 ACRE (8,425 SQ. FT.)  
TRACT OF LAND  
IN THE EDWARD COOK SURVEY  
ABSTRACT NO. 326  
TOWN OF ADDISON  
DALLAS COUNTY, TEXAS



GRAPHIC SCALE  
1 INCH = 60 FT.

## EXHIBIT C

Parcel 5-TE  
Field Note Description  
Arapaho Road Project  
Town of Addison  
Dallas County, Texas

BEING a description of a 0.0790 acre (3,443 square foot) tract of land situated in the Edward Cook Survey, Abstract Number 326, Town of Addison, Dallas County, Texas, and being a portion of a called 4.1525 acre tract of land as conveyed to Heritage Inn Number XIII as evidenced by the deed recorded in Volume 97018, Page 00073 of the Deed Records of Dallas County, Texas, also being a portion of "Lots 4 & 5, Block 1, Addison Restaurant Park", a addition to the Town of Addison as evidenced by the plat recorded in Volume 97209, Page 01069 of said Deed Records, said 0.0790 acre tract of land being more particularly described by metes and bounds as follows;

COMMENCING at the common Northeast corners of said called 4.1525 acre tract and a 24 foot wide right of way dedication as evidenced by said plat of "Lots 4 & 5, Block 1, Addison Restaurant Park", Southeast corner of a 60 foot wide right of way dedication as evidenced by the plat of Addison Restaurant Park, an addition to the Town of Addison as evidenced by the plat recorded in Volume 88066, Page 4219 of said Deed Records, and Northwest corner of Lot 1, Block A of Beltwood Reservoir, an addition to the Town of Addison as evidenced by the plat recorded in Volume 90012, Page 3386 of said Deed Records, said point also being in the West line of a called 19.01 acre tract of land conveyed to the City of Dallas as evidenced by deed recorded in Volume 4942, Page 629 of said Deed Records;

THENCE, SOUTH 00°12'19" WEST (called South 00°43'00" West), along the common East line of said called 4.1525 acre tract and West line of said called 19.01 acre tract, a distance of 24.40 feet to the Southeast corner of said 24 foot wide right of way dedication for the POINT OF BEGINNING of the herein described tract;

THENCE, SOUTH 00°12'19" WEST (called South 00°43'00" West), continuing along said common line, a distance of 1.94 feet to the beginning of a non tangent curve to the right;

# EXHIBIT C

## PARCEL 5-TE - ARAPAHO ROAD PROJECT

THENCE, SOUTHWESTERLY, departing said common line and along said curve to the right having a 1,182.92 feet, a central angle of  $19^{\circ}30'28''$ , a chord bearing South  $80^{\circ}15'57''$  West for 400.81 feet, passing at an arc distance of 311.44 feet the common West line of said Lot 5 and East line of said Lot 4, continuing for a total arc distance of 402.75 feet to the point of tangency of said curve;

THENCE, NORTH  $89^{\circ}58'49''$  WEST, a distance of 305.05 feet to a point in the common West line of said called 4.1525 acre tract and East line of a called 4.9814 acre tract of land conveyed to Motel 6 Operating L.P. as evidenced by the deed recorded in Volume 90024, Page 0779 of said Deed Records, same being all of Rodeway Inn, an addition to the City of Addison, as evidenced by the plat recorded in Volume 81052, Page 0775 of said Deed Records;

THENCE, NORTH  $00^{\circ}24'10''$  WEST (called North  $00^{\circ}08'59''$  West), along said common line, a distance of 1.92 feet to the Southwest corner of said 24 foot wide right of way dedication;

THENCE, NORTH  $85^{\circ}49'17''$  EAST (called North  $86^{\circ}21'00''$  East), departing said common line and along the South line of said 24 foot wide right of way dedication, a distance of 42.04 feet to a point in the proposed South right of way line of Arapaho Road;

THENCE, SOUTH  $89^{\circ}58'49''$  EAST, departing said line and along said proposed South right of way line of Arapaho Road, a distance of 263.14 feet to the point of curvature of a tangent curve to the left;

THENCE, NORTHEASTERLY, continuing along said proposed South right of way line of Arapaho Road and the arc of said curve to the left having a radius of 1,177.92 feet, a central angle of  $18^{\circ}35'31''$ , a chord bearing North  $80^{\circ}43'26''$  East for 380.55 feet, passing at an arc distance of 91.27 feet the common East line of said Lot 4 and West line of said Lot 5, continuing for a total arc distance of 382.22 feet to a point in the South line of said 24 foot wide right of way dedication;

THENCE, NORTH  $80^{\circ}11'36''$  EAST (called North  $80^{\circ}53'00''$  East), departing said proposed right of way line and along the South line of said 24 foot wide right of way dedication, a distance of 19.76 feet to the **POINT OF BEGINNING**;

EXHIBIT C

PARCEL 5-TE - ARAPAHO ROAD PROJECT

CONTAINING an area of 0.0790 acres or 3,443 square feet of land within the metes recited.

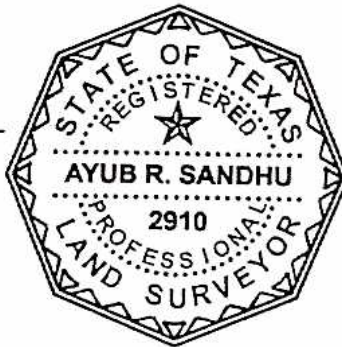
All bearings are referenced to the North Right of Way line of Centurion Way, called S 89°51'55" E, according to the final plat of Lot 3, Surveyor Addition, recorded in Vol. 77173, Page 135, Deed Records of Dallas County, Texas.

A plat of even survey date herewith accompanies this description.

I, Ayub R. Sandhu, a Registered Professional Land Surveyor, hereby certify that the legal description hereon and the accompanying plat represent an actual survey made on the ground under my supervision.

Ayub R. Sandhu 2-28-03

Ayub R. Sandhu, R.P.L.S.  
Texas Registration No. 2910



# EXHIBIT C

## EDWARD COOK SURVEY A-326

ARAPAHO ROAD  
(VARIABLE R.O.W.)  
VOL. 4942, PG. 629  
D.R.D.C.T.

LINE TABLE			
LINE	BEARING	CALLED	DIST
L1	S00°12'19"W	S00°43'00"W	24.40
L2	S00°12'19"W	S00°43'00"W	1.94
L3	N00°24'10"W	N00°08'59"W	1.92
L4	N85°49'17"E	N85°21'00"E	42.04
L5	N80°11'36"E	N80°33'00"E	19.76

CURVE TABLE			
CURVE	DELTA	RADIUS	CHORD
C1	19°30'28"	1182.92'	402.75'
C2	18°35'31"	1177.92'	382.22'



ARAPAHO ROAD

P.O.C.  
FND. 5/8" IRON ROD

(60' R.O.W.)  
VOL. 88066, PG. 4219  
D.R.D.C.T.

(24' R.O.W.)  
VOL. 97209, PG. 01069  
D.R.D.C.T.

589°58'49"E - 263.14'  
N 89°58'49" W - 305.05'

PROPOSED ARAPAHO ROAD

L - 91.27'

MOTEL 6 OPERATING L.P.  
CALLED 4.9814 ACRES  
FEBRUARY 1, 1990  
VOL. 90024, PG. 0779  
D.R.D.C.T.

RODEWAY INN  
JANUARY 16, 1981  
VOL. 81052, PG. 0775  
D.R.D.C.T.

LOTS 4 & 5,  
BLOCK 1,  
ADDISON RESTAURANT PARK  
VOL. 97209, PG. 01069  
D.R.D.C.T.

HERITAGE INN NUMBER XIII,  
LIMITED PARTNERSHIP  
CALLED 4.1525 ACRES  
VOL. 97018, PG. 00073  
D.R.D.C.T.

LOT 5

CALLED 19.01 AC.  
CITY OF DALLAS  
AUGUST 5, 1958  
VOL. 4942, PG. 629  
D.R.D.C.T.

LOT 1  
BLOCK A  
BELTWOOD RESERVOIR  
AUGUST 2, 1989  
VOL. 90012, PG. 3386  
D.R.D.C.T.

PARCEL 5-TE  
A PLAT OF A

0.0790 ACRE (3,443 SQ. FT.)  
TRACT OF LAND  
IN THE EDWARD COOK SURVEY  
ABSTRACT NO. 326  
TOWN OF ADDISON  
DALLAS COUNTY, TEXAS



- DENOTES A FOUND POINT AS INDICATED
- DENOTES A 5/8" IRON ROD SET UNLESS OTHERWISE NOTED
- PROPOSED RIGHT OF WAY LINE

### NOTES:

ALL EASEMENTS SHOWN ARE TAKEN FROM THE PLATS INDICATED HEREON. THE SURVEYOR DID NOT ABSTRACT THE SUBJECT PROPERTY SO ALL EASEMENTS MAY NOT BE SHOWN.

ALL BEARINGS ARE REFERENCED TO THE NORTH RIGHT OF WAY LINE OF CENTURION WAY, CALLED S 89°51'55" E, ACCORDING TO THE FINAL PLAT OF LOT 3, SURVEYOR ADDITION, RECORDED IN VOL. 77173, PAGE 135, D.R.D.C.T.

A LEGAL DESCRIPTION OF EVEN SURVEY DATE HEREWITH ACCOMPANIES THIS PLAT.



GRAPHIC SCALE  
1 INCH = 60 FT.

**EXHIBIT D**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

**After Recording Return To:**  
**Angela K. Washington**  
**Cowles & Thompson, P.C.**  
**901 Main Street, Suite 4000**  
**Dallas, Texas 75202**

**RIGHT-OF-WAY DEED**

**DATE:** \_\_\_\_\_, 2003

**GRANTOR:** HERITAGE INN NUMBER XIII, LIMITED PARTNERSHIP  
1201 Page Drive  
Fargo, ND 58103

**GRANTEE:** TOWN OF ADDISON, TEXAS  
5300 Belt Line Road  
Addison, TX 75001  
(Dallas County, Texas)

**CONSIDERATION:**

Fifty Eight Thousand Nine Hundred Seventy Five DOLLARS AND No/100 (\$58,975.00), in hand paid by Grantee, the receipt and sufficiency of which is acknowledged by Grantor.

**PROPERTY (INCLUDING ANY IMPROVEMENTS):**

A tract of land, herein referred to as Parcel 5, containing approximately 8,425 square feet of land, and more particularly described in Exhibit A (Parcel 5 Field Note Description), and depicted on Exhibit B (Parcel 5 Survey Depiction), which are attached hereto and incorporated herein by reference.

**CONVEYANCE:**

For the consideration described above, Grantor hereby grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and to hold it to Grantee, Grantee's heirs, executors, administrators, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

**MISCELLANEOUS:**

(a) Nothing in this instrument shall be construed as a waiver by Grantee of any utility connection charge or other charges imposed by ordinance or Charter of the Town of Addison.

**EXHIBIT D**

(b) The Property hereby conveyed may be used as a public right-of-way for the passage of vehicular and pedestrian traffic, including (without limitation) streets, roads, sidewalks, utilities, drainage, and other customary uses of public right-of-way. Improvements may be on such grade and according to such plans and specifications as will, in the opinion of Grantee, best serve the public purpose.

(c) The consideration described above shall be deemed full compensation for the conveyance of the Property, and for any diminution in value that may result to the remaining property of Grantor by virtue of Grantee's use of the Property.

(d) When the context requires it, singular nouns and pronouns include the plural.

**EXECUTED** effective as of the day first written above.

**Heritage Inn Number XIII, Limited Partnership**

By: Midwest Heritage Inn, Inc., its General Partner

By: *Gary Tharaldson*  
Gary Tharaldson, President

**STATE OF NORTH DAKOTA**

§  
§  
§

**COUNTY OF CASS**

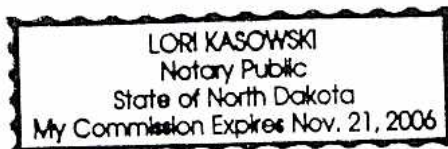
Before Me, the undersigned notary public in and for said county and state, on this 10<sup>th</sup> day of June, 2003, personally appeared Gary Tharaldson, President of Midwest Heritage Inn, Inc., known to me to be the identical person who executed the within and foregoing document, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or entity upon behalf of which he acted, executed the instrument, for the uses and purposes therein set forth.

*Lori Kasowski*  
Notary Public, State of North Dakota  
Print Name: Lori Kasowski

My Commission Expires:

Nov. 21, 2006

[SEAL]



**EXHIBIT E**

**TEMPORARY CONSTRUCTION EASEMENT**

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF DALLAS

§

§

**THAT HERITAGE INN NUMBER XIII, LIMITED PARTNERSHIP**, a North Dakota Partnership, hereinafter called GRANTOR, for and in consideration of the sum of One Thousand Eight Hundred Ninety Three DOLLARS AND 65/100 (\$1,893.65) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does by these presents grant, sell and convey to the Town of Addison, hereinafter called GRANTEE of the County of Dallas and State of Texas, a temporary easement and right of passage in, on, over, across, along, under and through a portion (the "Easement Area") of GRANTOR'S property, which easement and right of passage is shown and depicted on Exhibit B, attached to and incorporated herein, for the purpose of constructing a roadway to be known as Arapaho Road. The Easement Area is described as follows:

See attached Exhibit A (Field Note Description for Parcel 5-TE), which is made a part of this easement as if fully copied herein.

This temporary construction easement shall only be used by GRANTEE and its contractors in connection with the construction of a public right-of-way adjacent to the Easement Area. GRANTEE shall restore the Easement Area to the condition that existed before the construction of the roadway.

This temporary easement shall terminate 24 months from the date of the Notice to Proceed with construction under the construction contract for the roadway adjacent to the Easement Area, or upon completion of the construction of the portion of the roadway adjacent to the Easement Area, whichever is earlier.

**TO HAVE AND TO HOLD** unto the Town of Addison, Texas as aforesaid, for the purposes and on the conditions set forth hereinabove, the easement and Easement Area described above. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and defend all and singular the Easement Area to Grantee for the duration and purposes set out herein against every person whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED this 10th day of June, 2003.

GRANTOR

**Heritage Inn Number XIII, Limited Partnership**

By: Midwest Heritage Inn, Inc., its General Partner

By: Gary Tharaldson

Print Name: Gary Tharaldson

Print Title: PRESIDENT

**EXHIBIT E**

STATE OF North Dakota §  
COUNTY OF Cass §

10<sup>th</sup> BEFORE ME, the undersigned notary public in and for said county and state, on this day of June, 2003, personally appeared Gary Charaldson, known to me to be the identical person who executed the within and foregoing document, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or entity upon behalf of which he acted, executed the instrument, for the uses and purposes therein set forth.

GIVEN UNDER my hand and seal of office the day and year last above written.

Lori Kasowski  
Notary Public, State of North Dakota  
Print Name: Lori Kasowski

MY COMMISSION EXPIRES:

Nov. 21, 2006

[SEAL]

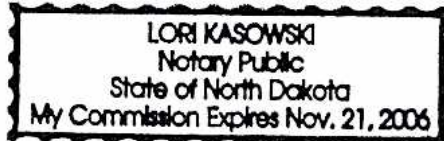


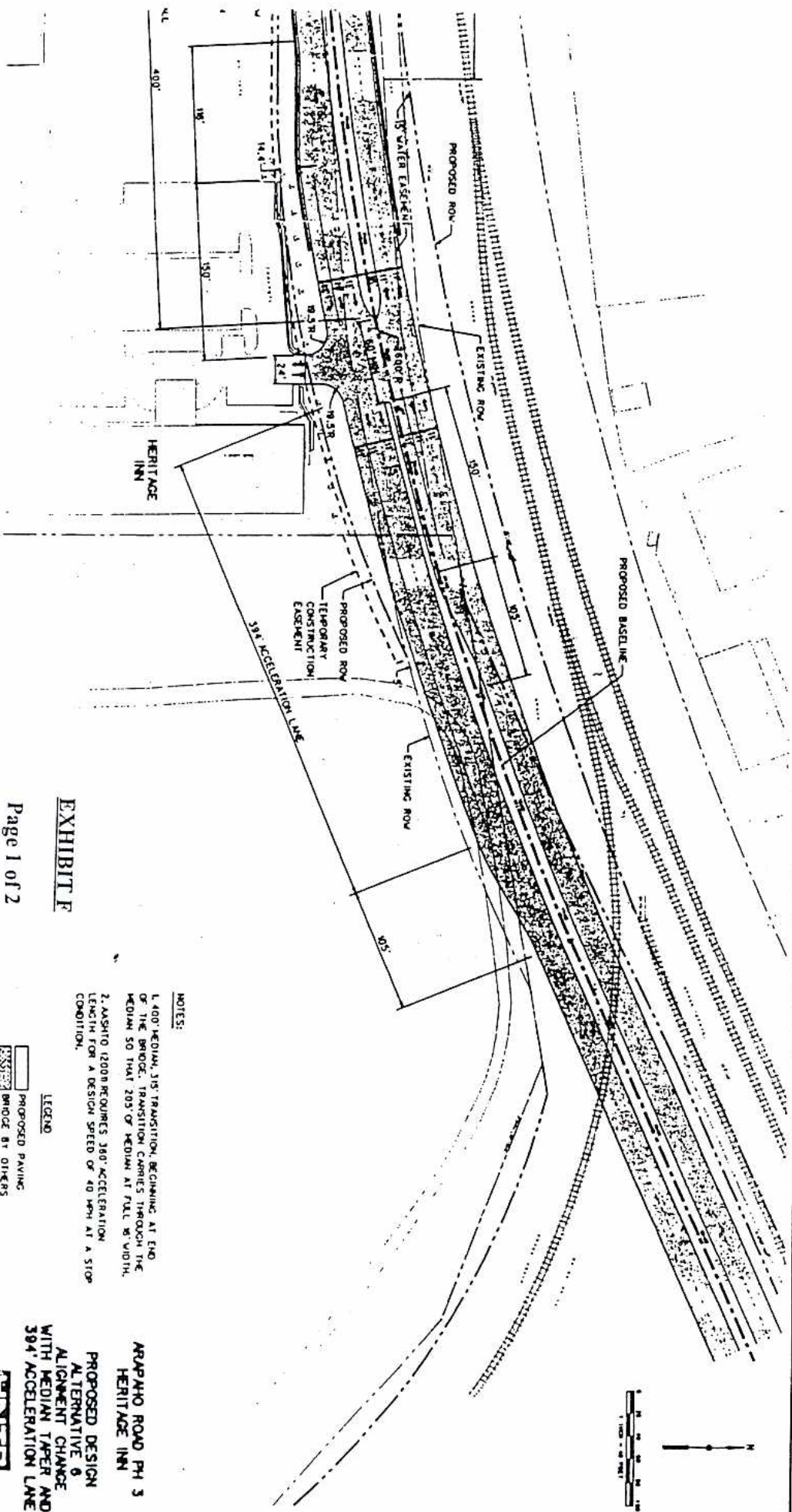
EXHIBIT F

PROPOSED PAVING  
BRIDGE BY OTHERS

LEGEND

- NOTES:
1. 400' MEDIAN, 315' TRANSITION, BEGINNING AT END OF THE BRIDGE. TRANSITION CARRIES THROUGH THE MEDIAN SO THAT 205' OF MEDIAN AT FULL WIDTH.
  2. ASHITO 1200R REQUIRES 380' ACCELERATION LENGTH FOR A DESIGN SPEED OF 40 MPH AT A STOP CONDITION.

ARAPAHO ROAD PH 3  
HERITAGE INN  
PROPOSED DESIGN  
ALIGNMENT CHANGE  
WITH MEDIAN TAPER AND  
384' ACCELERATION LANE





**Council Agenda Item: #R8**

**SUMMARY:**

This item is for consideration and approval of a resolution authorizing the purchase of a 0.041 acre easement generally located at 15180 Addison Road for street right-of-way and other public purposes, approving an easement agreement for said purchase, and providing an effective date.

**FINANCIAL IMPACT:**

Budgeted Amount: N/A

Cost: \$9,282.00

Source of Funds: \$2,500,000 was funded from General Obligation Bonds.  
An additional \$1,300,000 was programmed from DART  
LAP/CMS funds.

**BACKGROUND:**

The right-of-way acquisition process is nearing completion on the proposed Addison Road Widening, Phase I project. Approximately 0.041 acre of Parkway Easement adjacent to the proposed widening of Addison Road (see attached parcel map) is required for the purpose of constructing landscaping, irrigation and sidewalk improvements. This parcel is a portion of a tract of land in the Quorum Centre Addition, and owned by Outback Steakhouse of Florida, Inc. The property owner previously received a copy of an appraisal from the Town, with a total compensation value of \$18,590.00 for the easement. However, the Town was successful in negotiating for a compensation amount of \$9,282.00, which represents approximately 50% of the original appraised value.

**RECOMMENDATION:**

It is recommended that Council approve a resolution authorizing the purchase of a 0.041 acre easement generally located at 15180 Addison Road for street right-of-way and other public purposes, approving an easement agreement for said purchase, and providing an effective date.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. R \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, APPROVING THE PURCHASE OF AN EXCLUSIVE AND PERPETUAL EASEMENT IN A 0.041 ACRE TRACT OF LAND GENERALLY LOCATED AT 15180 ADDISON ROAD FOR STREET RIGHT-OF-WAY AND OTHER PUBLIC PURPOSES; APPROVING AN EASEMENT AGREEMENT FOR SAID PURCHASE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the proposed Addison Road Improvement Project is currently underway, which includes right-of-way acquisitions; and

**WHEREAS**, a tract of land approximately 0.041 acres in size (as described in Exhibit A to the Easement Agreement attached hereto and incorporated herein) is required for street right-of-way and other public purposes in connection with the proposed improvements to Addison Road; and

**WHEREAS**, the owner of said tract has agreed to convey the necessary easement to the Town of Addison for \$9,282.00; and

**WHEREAS**, the owner has executed an agreement regarding the conveyance of such easement for said amount subject to approval by the City Council, which agreement is attached hereto and incorporated herein; Now, Therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**Section 1.** That the City Council has determined that \$9,282.00 is reasonable compensation for the easement, as described in the above premises, to be acquired and all damages to the property remaining, and does hereby authorize the City Manager to acquire the easement in, over, under and through the 0.041 acre tract of land (as described in the attached Exhibit A to the Easement Agreement attached hereto and incorporated herein, and located generally at 15180 Addison Road) for street right-of-way and other public purposes in connection with the improvements to Addison Road.

**Section 2.** That the City Council does hereby approve the Easement Agreement attached hereto regarding the purchase of the easement described in Section 1 above, and hereby authorizes the City Manager to take such other and further action as may be necessary to acquire the said easement.

**Section 3.** That the City Finance Director be and is hereby authorized to draw a check in favor of Outback Steakhouse of Florida, Inc., or the current owner(s) of record, in the amount of \$9,282.00.

**Section 4.** That this Resolution shall take effect immediately from and after its passage.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this 27<sup>th</sup> day of January, 2004.

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R. Scott Wheeler, Mayor

ATTEST:

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Carmen Moran, City Secretary

APPROVED AS TO FORM:

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Ken C. Dippel, City Attorney

## EASEMENT AGREEMENT

This Agreement is made and entered into by and between Outback Steakhouse of Florida, Inc. ("Grantor"), and the Town of Addison, Texas (the "Town").

### WITNESSETH:

**WHEREAS**, Grantor is the sole owner of certain real property located in the Town of Addison and described in Exhibit A attached hereto and incorporated herein (the "Easement Property"); and

**WHEREAS**, the Town of Addison intends to construct an extension of Addison Road through the Town (the " Project"), part of which will be located upon and over the Easement Property; and

**WHEREAS**, the Town desires to acquire an exclusive and perpetual easement in, over, across, upon, under and through the Easement Property for street right-of-way and other public purposes in connection with the construction of the Addison Road Extension, and Grantor desires to sell and convey such easement to the Town;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements herein contained, Outback Steakhouse of Florida, Inc., and the Town of Addison agree as follows:

1. **Grant of Easement.** For and in consideration of the sum set forth in 2. below in hand paid by the Town, the receipt and sufficiency of which is hereby acknowledged and confessed, Grantor has GRANTED, SOLD AND CONVEYED, and by theses presents does GRANT, SELL AND CONVEY unto the Town of Addison, Texas, its successors and assigns, a perpetual and exclusive easement and right-of-way (the "Easement") in, over, across, upon, under and through the property described in Exhibit A and depicted on Exhibit B (the "Easement Property") (the said Exhibits being attached hereto and incorporated herein).

2. **Consideration.** This easement is granted, sold and conveyed in consideration of the Town's payment to Grantor of the sum of Nine Thousand Two Hundred Eighty Two and No/100 dollars (\$9,282.00), the receipt and sufficiency of which is acknowledged as full compensation for the Easement, any damage to or diminution in value of the Remainder or any other lands or property belonging to Grantor that may be claimed or asserted by virtue of such grant, sale and conveyance and use of the Easement and the Easement Property by the Town, and to avoid the cost and expense of litigation. For purposes of this Agreement, the term "Remainder" shall mean that property described in attached Exhibit C, save and except the Easement Property.

**3. Purpose of Easement; Other Provisions.**

A. The Easement, together with all of its rights and privileges, may be used by the Town, its employees, contractors, agents, successors, and assigns in connection with activities relating to the construction, placement, installation, reconstruction, relocation, alteration, operation, use, inspection, maintenance, improvement, and modification of landscaping, irrigation, lighting, utility, sidewalk, or other parkway improvements. The Town may perform all excavation, boring, backfilling, embedding, drilling, grading, and other construction activities as the Town from time to time deems necessary, appropriate, or desirable in the Town's reasonable discretion, with respect to the Project and the improvements within the Easement. The Town shall, at all times, have the right of ingress and egress to and from the Easement and the Easement Property as the Town may deem necessary, appropriate, or desirable. The Town shall be solely responsible for and the Town agrees to, at its sole cost and expense, relocate or alter the storm sewer outlet currently located within the Easement in any way necessary in connection with the Project. The Town acknowledges and confirms that, except as may be otherwise agreed by the parties, the Grantor's existing sign, which is not within the easement Property, does not need to be and will not be relocated.

B. Grantor acknowledges and agrees as follows:

(i) The Town may authorize and permit third parties to use the Project on such terms as the Town in its sole discretion deems appropriate, but no third parties, including the general public, shall acquire any rights in the Easement or the Easement Property as a result of such use.

(ii) Grantor shall not construct or place within the Easement Property any building, fences, wall, plant, or other structure, improvement, or growth of any character or type which would interfere, in the Town's reasonable determination, with the Easement, with the Project or with any improvements within the Easement. The Town shall have the right to remove, and keep removed, all or parts of any such building, fence, plant, or other structure, improvement or growth of any character or type that is located within the Easement Property and which, in the judgment of the Town, may endanger or in any way interfere with the construction, efficiency, or convenient and safe operation of the Project or the exercise of the Town's rights hereunder.

C. Grantor, its successors and assigns, may fully use and enjoy the Easement Property, except that such use and enjoyment shall not unreasonably hinder, conflict or interfere with the exercise of the Town's rights hereunder or with the safe and efficient operation of the Project.

D. The Town agrees that all work to be performed by or for the Town in the Easement shall be performed in a good and workmanlike manner, and that no lien for work performed as part of the Project shall be placed upon the Easement.

E. The Town shall indemnify and hold harmless Grantor from and against any an all liability, actions, causes of action, damages, claims, lawsuits, judgments, costs and expenses for personal injury or property damage suffered by any person to the extent that such injury or damage may be caused by any negligent act of the Town in connection with work performed by

or for the Town under this agreement; provided, however, that such indemnity is provided by the Town without waiving any immunity that it may be entitled to, and further such indemnity is subject to and shall not exceed the monetary limitations of damages as set forth in the Texas Tort claims Act. In providing this indemnity, the Town is not waiving any defense afforded by federal or Texas law, and this indemnity is solely for the benefit of Grantor and is not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

F. The Town shall name Grantor as an additional insured on its insurance policy for purposes of protecting Grantor against any claims, liabilities, losses or suits arising out of or in connection with work performed by or for the Town during the construction of the Project in the Easement Area.

4. **Access.** Construction shall be conducted in a manner that will maintain or provide at least one point of access to Addison Road from the Remainder at all times during such construction.

5. **Warranty of Title.** TO HAVE AND TO HOLD the Easement, together with all and singular the rights, privileges, and appurtenances thereto in anywise belonging, unto the Town of Addison, Texas, its successors and assigns; and Grantor does hereby bind itself, its representatives, successors, and assigns to WARRANT AND FOREVER DEFEND all and singular the Easement and rights conveyed in this instrument unto the Town of Addison, Texas, its representatives, successors, and assigns, against every person whomsoever lawfully claiming or to claim all or any part of the interest in the Property by, through or under Grantor.

6. **Exclusiveness of Easement.** The easement, rights, and privileges granted by this conveyance are exclusive, and Grantor covenants not to convey any other easement or conflicting rights in the area covered by this grant.

7. **Governing Law; Venue.** In the event of any action under this Contract, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas govern the validity, construction, enforcement and interpretation of this Agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Agreement.

8. **Entire Agreement.** This Agreement contains the entire agreement between the parties relating to its subject matter. Any oral representations or modifications concerning this Agreement shall be of no force and effect. Any subsequent amendment or modification must be in writing and agreed to by both parties.

9. **Authority.** The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary

resolutions or other act extending such authority have been duly passed and are now in full force and effect.

10. **Binding Effect.** This Agreement shall bind and inure to the benefit of the respective parties, their personal representatives, successors, and assigns.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2004

**GRANTOR:**

**Outback Steakhouse of Florida, Inc.**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2004

**TOWN OF ADDISON**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

STATE OF FLORIDA                   §  
COUNTY OF HILLSBOROUGH       §

BEFORE ME, the undersigned notary public in and for said county and state, on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, personally appeared \_\_\_\_\_, \_\_\_\_\_ of Outback Steakhouse of Florida, Inc., a Florida corporation, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person or entity upon behalf of which he acted executed the instrument for the uses and purposes therein set forth.

GIVEN UNDER my hand and seal of office the day and year last above written.

\_\_\_\_\_  
Notary Public in and for the State of Florida

MY COMMISSION EXPIRES:

\_\_\_\_\_  
[ S E A L ]

STATE OF TEXAS                   §  
COUNTY OF DALLAS             §

BEFORE ME, the undersigned notary public in and for said county and state, on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, personally appeared Ron Whitehead, City Manager for the Town of Addison, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person or entity upon behalf of which he acted executed the instrument for the uses and purposes therein set forth.

GIVEN UNDER my hand and seal of office the day and year last above written.

\_\_\_\_\_  
Notary Public in and for the State of Texas

MY COMMISSION EXPIRES:

\_\_\_\_\_  
[ S E A L ]

## TOWN OF ADDISON, TEXAS

FIELD NOTE DESCRIPTION  
FOR  
OUTBACK STEAKHOUSE OF FLORIDA, INC.  
(PARKWAY EASEMENT)

BEING a parcel of land out of a 1.3774 acre tract of land located in the G. W. Fisher Survey, Abstract No. 482, in the Quorum Centre Addition, an addition to the Town of Addison, Texas, conveyed to Outback Steakhouse of Florida, Inc. by a deed now record in Volume 93046, Page 1218, of the Deed Records of Dallas County, Texas, said parcel of land being more particularly described as follows:

BEGINNING at a point in south line of said 1.3774 acre tract and in the north line of a tract of land conveyed to Snadon\Branscome Joint Venture No.1 by a deed now of record in Volume 84067, Page 5718 of the Deed Records of Dallas County, Texas, said point being N 89°43'00" W, 263.54 feet from a 5/8" iron rod found marking the southeast corner of the said 1.3774 acre tract;

THENCE, N 89°43'00" W, along the north property line of the said Snadon\Brascome tract and the south property line of the said 1.3774 acre tract, a distance of 8.00 feet to a point for a corner, said point being in the east line of tract of land 12 foot wide right-of-way dedication to the Town of Addison for Addison Road and in the west property line of the said 1.3774 acre tract;

THENCE, N00°17'00" E, along the east line of the said Town of Addison right-of-way dedication and the west line of the said 1.3774 acre tract, a distance of 221.00 feet to a point for a corner, said point being in the north line of the said 1.3774 tract and the south line of a tract of land conveyed to Rail Hotels Corporation as recorded in Volume 99024, Page 1020 of the Deed Records of Dallas County, Texas, said point also being N 89°23'49" E, a distance of 11.92 feet to a "X" found marking the east right-of-way line of Addison Road and the southwest corner of the said Rail Hotels tract;

THENCE, S 89°43'00" E, along the north line of the said 1.3774 acre tract and the south line of the said Rail Hotels tract, a distance of 8.00 feet to a point for a corner;

THENCE, S 00°17'00" W, being at all times parallel and at a perpendicular distance of 8 feet to the west property line of the said 1.3774 acre tract and the east line of the said Town of Addison right-of-way dedication, a distance of 221.00 feet to the Point of Beginning, and containing 1,768.00 square feet (0.041 acres) of land.



*Ronald V. Conway*  
11/15/02

ADDISON ROAD

N 89°43'00" W - 8.00'

POINT OF BEGINNING

N 00°17'00" E - 221.00'  
S 00°17'00" W - 221.00'

12' DEDICATED TO TOWN OF ADDISON

1768.00 SQ. FT.  
0.041 ACRES

N 89°23'49" E - 11.92'  
(REFERENCE BEARING)

S 89°43'00" E - 8.00'

N 89°43'00" W - 263.54'  
(REFERENCE BEARING)

OUTBACK STEAKHOUSE OF FLORIDA, INC.  
VOL. 93046 PG. 1218

G.W. FISHER SURVEY  
ABST. NO. 482  
QUORUM CENTRE ADDITION

5/8" I.R.F.

1/2" I.R.F.

60'± R.O.W.

180°03'58"

1/2" I.R.F.

SCALE: 1"=50'

RAIL HOTELS CORPORATION  
VOL. 99024, PG. 01020



TOWN OF ADDISON, TEXAS

ADDISON ROAD

BELT LINE RD. TO KELLER SPRINGS RD.

PARKWAY EASEMENT

BIRCHOFF, HENDRICKS & CONWAY, L.L.P.  
CONSULTING ENGINEERS  
7201 DREWELL AVE., SUITE 200 DALLAS, TX 75231 TEL 714-361-7200

NOV., 2002  
PLAT 4E

EXHIBIT B

## EXHIBIT C

BEING a tract of land situated in the G.W. Fisher Survey, Abstract No. 482, and being part of QUORUM CENTRE ADDITION, an addition to the City of Addison as recorded in Volume 84067, Page 5718, Map Records, Dallas County, Texas, and being more particularly described as follows:

COMMENCING at a point located at the most northerly point of a corner clip situated in the intersection of the south line of Arapaho Road (60' R.O.W.) and the east line of Addison Road (60' R.O.W.);

THENCE along the east line of said Addison Road the following:

S 45°18'19" W a distance of 21.17 feet to a point;

S 00°17'00" W a distance of 494.15 feet to a point;

THENCE S 89°43'00" E departing the east line of said Addison Road a distance of 12.00 feet to the POINT OF BEGINNING;

THENCE S 89°43'00" E a distance of 271.50 feet to a point for corner;

THENCE S 00°17'00" W a distance of 221.00 feet to a point for corner;

THENCE N 89°43'00" W a distance of 271.50 feet to a point for corner;

THENCE N 00°17'00" E parallel with the east line of said Addison Road a distance of 221.00 feet to the POINT OF BEGINNING and containing 60,002 square feet or 1.3774 acres of land.

**THERE ARE NO ATTACHMENTS  
FOR ITEM #ES-1**

**THERE ARE NO ATTACHMENTS  
FOR ITEM #ES-2**

#R9

**THERE ARE NO ATTACHMENTS  
FOR ITEM #R9**